

No. 3099

United States
Circuit Court of Appeals
For the Ninth Circuit.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

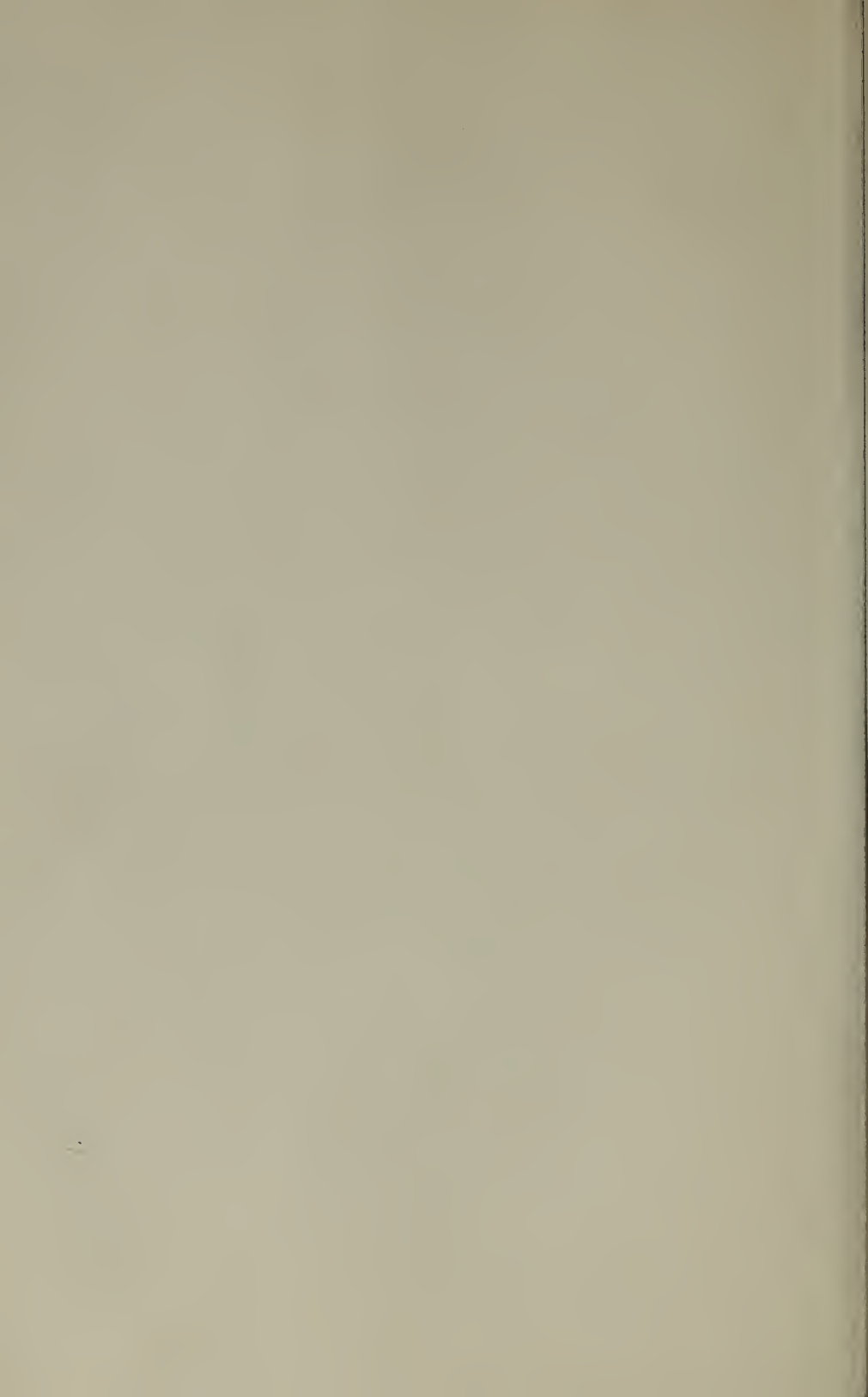
Transcript of Record.

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

FILED

JAN 18 1918

F. D. MONCKTON,
CLERK.



United States
Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

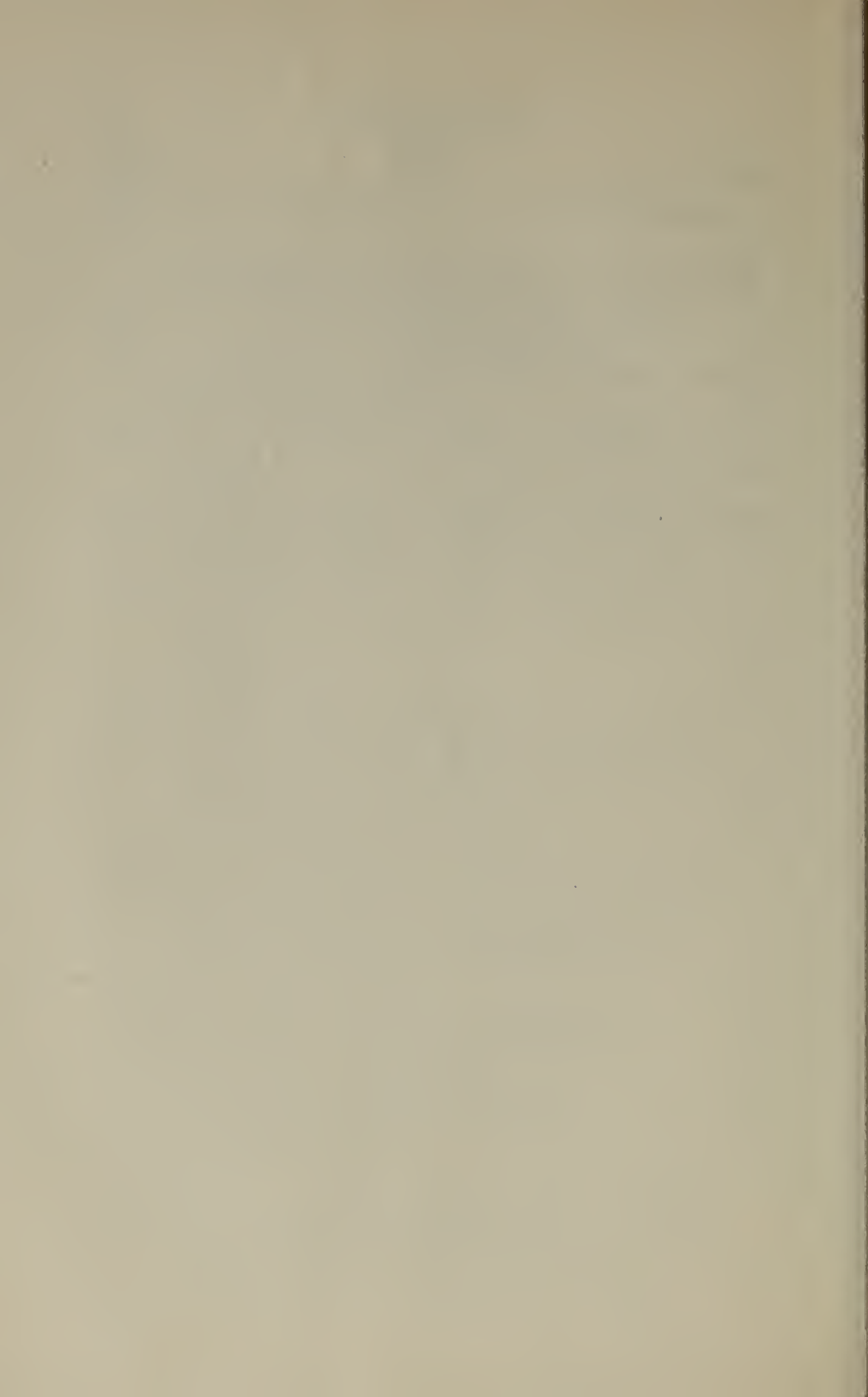
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In the Supreme Court of the Territory of Hawaii.

JANUARY TERM, MARCH SESSION 1917.

(Stamped \$2.00.)

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

Petition for Writ of Error.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the Territory of Hawaii:

The petition of Meleana Kalehua, the plaintiff in error above named, respectfully shows to this Honorable Court, as follows, to wit:

That heretofore on or about the 21st day of September, 1916, the plaintiff in error brought her action against Henry Clark, defendant in error, in the Circuit Court of the first Judicial Circuit, Territory of Hawaii, to quiet the title to certain lands situate in the Island of Oahu, Territory of Hawaii.

That thereafter and on, to wit, the 15th day of February, 1917, said cause came on regularly and duly for trial in said Circuit Court before the Honorable C. W. Ashford, First Judge of the Circuit Court of the First Judicial Circuit, sitting without a jury; that after hearing the evidence adduced on behalf of both parties hereto, said court granted judgment to defendant in error, together with the costs of the action; that six months have not elapsed

since the said judgment was rendered, entered and recorded; that said judgment is unpaid and has not been satisfied either in whole or in part; that plaintiff in error feels aggrieved by said [1*] judgment and says that in the proceedings prior to judgment and during the trial and at the trial and by the judgment of the court, many errors were committed by the said Circuit Court to the prejudice of the plaintiff in error, an assignment whereof is herewith presented and filed and she asks and prays that the proceedings in said cause, as shown by the record, pleadings, minutes of the clerk, exhibits, stipulations and the evidence recorded by the official stenographer of said court be inquired into and reviewed by this Honorable Court in connection with this petition.

Wherefore, your petitioner prays that a writ of error may issue out of this court addressed to the clerk of the said Circuit Court, commanding him, the said clerk, to send up to this Honorable Court all and singular the record in said described action at law to the end that the errors existing in the record may be corrected, and petitioner further prays that said errors may be by this Honorable Court corrected, the said verdict set aside, the judgment reversed and a new trial ordered and that full and complete justice may be done in the premises.

*Page-number appearing at foot of page of original certified Transcript of Record.

Dated Honolulu, T. H., March 9, 1917.

MRS. MELEANA KALEHUA.

Plaintiff in Error.

ANDREWS & PITTMAN,

Attorneys for Plaintiff in Error. [2]

Territory of Hawaii,

City and County of Honolulu,—ss.

Meleana Kalehua, being first duly sworn, deposes and says: That she is the plaintiff in error herein; that she has read the foregoing petition and knows the contents thereof and that the same is true to the best of her knowledge and belief.

MRS. MELEANA KALEHUA.

Subscribed and sworn to before me, this 9th day of March, 1917.

[Seal]

MABEL A. DOANBURG,

Notary Public, First Judicial Circuit, Territory of Hawaii.

[Endorsed]: No. 1013. Recd. \$26.00. Filed March 15, 1917, at 10:50 A. M. J. A. Thompson, Clerk. [3]

In the Supreme Court of the Territory of Hawaii.

JANUARY TERM, MARCH SESSION 1917.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

Plaintiff's Assignment of Errors.

Now comes the plaintiff in error, Meleana Kalehua, by her attorneys, Andrews & Pittman, and assigns errors committed by the Circuit Court of the First Judicial Circuit, Territory of Hawaii, at the trial of the above-entitled cause in February, 1917, to the prejudice of plaintiff in error during the progress of the case and in the determination, and to which plaintiff duly excepted, as follows, to wit:

I.

The Court erred in deciding that the divorce of Emma H. N. Clark vs. Henry C. Clark, who it is admitted is the defendant in error, being Divorce No. 4304, was a good and valid divorce and that said Henry C. Clark was therefore, able to legally marry Alexandrina Leihulu and, by said marriage, was her sole heir at law.

II.

That the Court erred in rendering its decision against plaintiff in error and in favor of defendant in error, and further rendering judgment dismissing the complaint of the plaintiff in error and denying that she was the heir at law of Alexandrina [4] Leihulu and, for and on account of said errors assigned above, to all of which objection and exception was taken by the plaintiff in error, the plaintiff in error prays that all of the proceedings in said action be by this Honorable Court reviewed and that said judgment of the said Circuit Court be set aside and such orders be entered herein as to this Honorable Court may seem meet and proper.

Dated Honolulu, T. H., March 9, 1917.

MELEANA KALEHUA,
Plaintiff in Error,
By ANDREWS & PITTMAN,
Attorneys for Plaintiff in Error.

[Endorsed]: No. 1013. Filed March 15, 1917, at
10:50 A. M. J. A. Thompson, Clerk. [5]

In the Supreme Court of the Territory of Hawaii.

JANUARY TERM, MARCH SESSION 1917.
MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

Notice of Issuance of Writ of Error, etc.

To Henry Clark, Defendant in Error:

PLEASE TAKE NOTICE: That a writ of error has been issued in this cause upon the petition of the above-named plaintiff in error in connection with the foregoing assignments of error.

Dated Honolulu, T. H., March 15th, 1917.

ANDREWS & PITTMAN,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed March 15, 1917, at 10:50 A. M., J. A. Thompson, Clerk. No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clerk, Defendant in Error. Petition for Writ of Error, and Assignments of Error. Filed March 15, 1917, at

10:50 A. M. J. A. Thompson, Clerk. Andrews & Pittman, Attorneys for Plaintiff in Error. [6]

In the Supreme Court of the Territory of Hawaii.

(Stamped \$2.00.)

MELEANA KALEHUA,

Plaintiff and Plaintiff in Error,

vs.

HENRY CLARK,

Defendant and Defendant in Error.

Summons.

The Territory of Hawaii: To the High Sheriff of the Territory of Hawaii, or his Deputy; the Sheriff of the City and County of Honolulu or his Deputy:

You are commanded to summon Henry Clark, defendant in error, to appear before the Supreme Court of the Territory of Hawaii, within twenty (20) days after service hereof, to answer the annexed Petition for Writ of Error, Assignment of Errors and Notice of Meleana Kalehua, Plaintiff and Plaintiff in Error.

And have you then there this Writ with full return of your doings thereon.

WITNESS the Honorable Chief Justice of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 15th day of March, 1917.

[Seal]

J. A. THOMPSON,
Clerk. [7]

[Endorsed]: No. 1013. Supreme Court, Territory of Hawaii. Meleana Kalehua, Plaintiff and Plaintiff in Error, vs. Henry Clark, Defendant and Defendant in Error. Summons. Issued at 11:10 o'clock A. M., March 15, 1917, J. A. Thompson, Clerk. Received at 10:30 A. M., Mch. 16, A. D. 1917. P. Gleason, Deputy High Sheriff, Ent. Returned at 1:12 o'clock P. M., March 19, 1917. J. A. Thompson, Clerk.

Sheriff's Return to Summons.

Served the within Summons on Henry Clark, therein named as defendant in error, at Honolulu, city and county of Honolulu, Territory of Hawaii, this 16th day of March, A. D. 1917, by delivering to Carlos A. Long, the attorney in fact of said Henry Clark, defendant in Error, a certified copy hereof, and of the Petition for Writ of Error, Plaintiff's Assignment of Errors and Notice annexed hereto, and at the same time showing him the original.

Dated at Honolulu, city and county of Honolulu, Territory of Hawaii, this 16th day of March, A. D. 1917.

PATRICK GLEASON,
Deputy High Sheriff, Territory of Hawaii.

In the Supreme Court of the Territory of Hawaii.

JANUARY TERM, MARCH SESSION.

(Stamped \$1.00.)

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Bond on Writ of Error Returnable in Supreme Court,
Territory of Hawaii.**

KNOW ALL MEN BY THESE PRESENTS:
That we, Meleana Kalehua, as principal, and Y. Ahin, as surety, are held and firmly bound unto J. A. Thompson, Esq., clerk of the Supreme Court of the Territory of Hawaii, and his successors in office, in the sum of Fifty Dollars (\$50), lawful money of the United States, to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that

WHEREAS, in an action at law heretofore pending in and before the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, wherein said bounden principal was plaintiff and Henry Clark was defendant, the said Circuit Court did, on the 15th day of February, 1917, order, render and enter a judgment of said Circuit Court, wherein and whereby judgment was rendered for the said defendant and against the plaintiff, adjudging

that plaintiff take nothing by reason of her said complaint and the said bounden obligor, as plaintiff in error, is about to sue out a Writ of Error from the said Circuit Court of the First Judicial [8] Circuit of the Territory of Hawaii to the Supreme Court of the Territory of Hawaii to the end that the judgment of the said Circuit Court in said cause above described may be reviewed by the said Supreme Court of the Territory of Hawaii, and has taken and is about to take such further and other proceedings as may be necessary to obtain a review of the said judgment by the said Supreme Court of the Territory of Hawaii;

NOW, THEREFORE, if the said bounden principal shall prosecute said Writ of Error to effect and shall answer all damages and costs, if she fails to make her plea good, or if she fails to make her said plea good and to obtain a reversal of the said judgment, the said bounden obligors will pay the said judgment in said original cause in case of failure to sustain the writ of error, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principal and the said surety have hereunto set their hands and seals at the City and County of Honolulu aforesaid, this 9th day of March, 1917.

MRS. MELEANA KALEHUA,

Principal.

Y. AHIN,

Surety.

Approved.

A. G. M. ROBERTSON,

Chief Justice.

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Bond. Filed March 15, 1917, at 11:10 A. M. J. A. Thompson, Clerk. Andrews & Pittman, Attorneys for Plaintiff in Error. [9]

In the Supreme Court of the Territory of Hawaii.

(Stamped \$2.00.)

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Writ of Error from Supreme Court, Territory of
Hawaii.**

The Territory of Hawaii: To Joseph K. Cullen, Esquire, Clerk Circuit Court, First Judicial Circuit:

Whereas, in an action lately pending before the Circuit Court of the First Circuit, in which Meleana Kalehua was plaintiff, and the said Henry Clark was defendant, error is alleged to have occurred as appears by the assignment of errors on file in this court, you are commanded forthwith to send up to this court the record and the exhibits filed in said proceedings,

WITNESS, the Hon. A. G. M. ROBERTSON,
Chief Justice of the Supreme Court, at Honolulu,

Territory of Hawaii, this 15th day of March, 1917.

[Seal]

J. A. THOMPSON,

Clerk Supreme Court.

Received the foregoing writ of error on this 15th day of March, A. D. 1917, at 11:25 o'clock A. M.

J. C. CULLEN,

Clerk Circuit Court, First Circuit.

Return to Writ of Error.

In obedience to the foregoing Writ of Error to me directed and in pursuance of the praecipe filed in the above-entitled cause, I herewith transmit to the Supreme Court of the Territory of Hawaii, the certified transcript of the Record in said cause, said record consisting of the papers and documents and exhibit more particularly set forth and enumerated in the certificate appended to said record.

Dated Honolulu, T. H., March 28th, 1917.

[Seal]

J. C. CULLEN,

Clerk, Circuit Court, First Circuit, Territory of Hawaii. [10]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Writ of Error. Filed and Issued March 15, 1917, at 11:10 A. M. J. A. Thompson, Clerk. Returned March 28, 1917, at 11:15 A. M. Robert Parker, Jr., Assistant Clerk. [11]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.—STAMPS \$2.00.
MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Bill of Complaint.

Now comes the plaintiff, by her attorneys, Andrews & Pittman, and complaining of the defendant, alleges:

I.

That the plaintiff is entitled, in fee simple absolutely, to those certain pieces or parcels of land situated in the city and county of Honolulu, Territory of Hawaii, hereunder set out and described, to wit:

(a) All those certain pieces or parcels of land situate at Kamoku, Waikiki, city and county of Honolulu, Territory of Hawaii, described in R. P. No. 6875, L. C. A. No. 1412, to Malo, particularly bounded and described as follows:

APANA 1. Commencing at the west angle of Keaka's land and running:

N. 41° W. 1 chain 75 links along Kuluwailehua;
thence

N. 55° E. 1 chain 67 links along Keaweawe; thence

S. 42° E. 1 chain 61 links along Kahiaweawe;
thence

S. 51° W. 1 chain 72 links along Keaka to the point of commencement.

Area, .27 Acres. [12]

APANA 2. Commencing at South angle of lot and running:

N. $41\text{--}1\frac{1}{2}^{\circ}$ W. 4 chains 4 links along Kuluwailehua;
thence

N. 50° E. 1 chain 29 links along C. Kanaina;
thence

S. 41° E. 3 chains 87 links along the lands of
Kuluwailehua and Kaeina; thence

S. 43° W. 1 chain 26 links along lele of Waiaka.

Area, 0.49 acres.

(b) All that certain piece or parcel of land situate in Humu, Ili of Pukele, Palolo, City and County of Honolulu, Territory of Hawaii, described in R. P. No. 2539, L. C. A. No. 1912, to Malo, particularly bounded and described as follows:

APANA 1. Commencing at the South corner and running:

N. 58° W. 300 chains, or 198 feet, by the boundary of the Konohiki; thence

N. 49° E. 380 chains, or 250.8 feet, along the stream; thence

S. $49\text{--}1\frac{1}{2}^{\circ}$ E. 096 chains, or 634 feet, along the stream; thence

S. 13° W. 353 chains, or 233 feet, along the boundary of the Konohiki to the place of commencement.

Area, .72 acres.

APANA 2. House lot in Pukele. Commencing at the North corner and running:

S. 25° W. 200 chains, or 132 feet, along the boundary
of the land of Malo; thence

S. 62° E. 200 chains, or 132 feet, along the stone
fence; thence

N. 25° E. 200 chains, or 132 feet, thence

N. 62° W. 200 chains, or 132 feet, to the place of
commencement.

Area, .40 acres.

(c) All that certain piece or parcel of land situate at Paleula, City and County of Honolulu, Territory of Hawaii, [13] described in L. C. A. 1090 to Kapena, particularly bounded and described as follows:

APANA 2. Beginning at the North corner mauka in Pauoa stream and running 3.91 chains, or 258 feet, along stream; thence

S. $31\text{--}1\frac{1}{2}^{\circ}$ E.

N. $58\text{--}1\frac{1}{2}^{\circ}$ E. 2.21 chains, or 146 feet, along Pehu;
thence

N. $28\text{--}1\frac{1}{2}^{\circ}$ W. 0.82 chains, or 54 feet, along Umi to
point of commencement.

Area, 686 square fathoms.

(d) All that certain piece or parcel of land situate at Kaliu, Honolulu, City and County of Honolulu, Territory of Hawaii, described in L. C. A. 1090 to Kapena, particularly bounded and described as follows:

APANA 1. Beginning at makai North corner of this Luai Kulani, and running:

S. $46\text{--}1\frac{1}{4}^{\circ}$ E. 2.51 chains along Lua Kulani; thence

S. $55\text{--}3\frac{1}{4}^{\circ}$ E. 1.78 chains along Lua Kulani; thence

N. 28° E. 1.88 chains along lane; thence

N. $62-1\frac{1}{2}^{\circ}$ W. 1.52 chains; thence

N. 4° E. 1.37 chains; thence

N. $33-1\frac{1}{2}^{\circ}$ W. 2.63 chains along Kalehua; thence

S. $15-1\frac{1}{4}^{\circ}$ W. 1.44 chains along Auwaiolimu.

Area, 1141 square fathoms.

(e) All that certain piece or parcel of land situate in Peleula, Honolulu, City and County of Honolulu, Territory of Hawaii, described in L. C. A. No. 863 to Umiokalani, particularly bounded and described as follows:

APANA 1. House lot and loi. Beginning at North corner at Pauoa stream and running:

S. 41° E. 1 chain 15-10/12 feet, or 81.1 feet;
thence [14]

S. 20° E. 1 chain 53-5/12 feet, or 119.4 feet;
thence

S. $58-1\frac{1}{4}^{\circ}$ W. 1 chain 17-9/12 feet, or 83.8 feet;
thence

S. $76-1\frac{1}{4}^{\circ}$ W. 15-10/12 feet, or 15.9 feet; thence

N. 45° W. 1 chain 64-8/12 feet, or 130.7 feet to
road; thence

N. $32-1\frac{1}{2}^{\circ}$ E. 2 chains 19-9/12 feet, or 151.8 feet
along Nuuanu road.

Area, 663 square fathoms.

APANA 2. Beginning at East corner at bridge on North side of Nuuanu road, and running;

N. $84-1\frac{1}{4}^{\circ}$ W. 1 chain 30-3/12 feet, or 96.3 feet
along stream; thence

S. $61-3\frac{1}{4}^{\circ}$ W. 2 chains 48-3/12 feet, or 180.3 feet
along stream; thence

S. 29° E. 3 chains 1-3/12 feet, or 199.3 feet along
Kapena and Pehu to road; thence

N. $32\frac{1}{2}^{\circ}$ E. 4 chains 38-4/12 feet, or 302.3 feet
along Nuuanu road.

Area, 743 square fathoms.

(f) All those certain pieces or parcels of land situate in Manananui at Ewa, City and County of Honolulu, Territory of Hawaii, described in L. C. A. No. 5873 to Kahanaumaikai, particularly bounded and described as follows:

APANA 1. In Ili of Keahua. Beginning at North corner, and running:

S. 5° E.

S. $22\frac{1}{2}^{\circ}$ E. 4.23 chains, or 279.2 feet; thence

S. 61° E. 3.60 chains, or 237.6 feet; thence

S. 84° E. 2.10 chains, or 138.6 feet along Paauau
pond; thence

N. 69° E. 2.00 chains, or 132 feet along Paauau
pond; thence

N. 22° W. 8.00 chains, or 528 feet along Kauhi;
thence

N. 71° W. 6.20 chains, or 409.2 feet along Kam-
auoaeawa.

Area, 5.48 Acres. [15]

APANA 2. Pond and lois. Beginning at South-west corner, and running:

S. 64° E. 2.80 chains, or 184.8 feet along Paauau;
thence

N. $62\frac{1}{2}^{\circ}$ E. 1.00 chain, or 66.0 feet along Paauau;
thence

N. 32° E. 3.40 chains, or 224.4 feet along Kaho-
lona; thence

N. $8\frac{1}{2}^{\circ}$ W. 1.90 chains, or 125.4 feet along Kaho-
lona; thence

- N. 59° E. 2.00 chains, or 132.0 feet along Kaholona; thence
S. 45° E. 1.48 chains, or 97.7 feet along Kaholona; thence
N. 39° W. 2.74 chains, or 180.8 feet along Lolei; thence
N. 58° W. 5.25 chains, or 346.5 feet along Kaholona; thence
S. 35° W. 4.47 chains, or 295.0 feet along Ili of Kamuliwai; thence
S. 50° E. 1.90 chains, or 125.4 feet along Ili of Kamuliwai; thence
S. 50° W. 4.30 chains, or 283.8 feet along Ili of Kamuliwai; thence
S. 10° E. 3.90 chains, or 257.4 feet along Paauau to place of beginning.

Area, 3.30 Acres.

APANĀ 3. At Kalokomoo. Beginning at North corner and running:

- S. 58° W. 1.25 chains, or 82.5 feet, along Kaholona; thence
S. 23° E. 2.74 chains, or 180.8 feet along Kumuhakane; thence
S. 40° E. 6.10 chains, or 402.6 feet along Kumuhakane; thence
N. 36° E. 0.99 chains, or 65.3 feet along Kumuhakane; thence
N. 27° W. 0.87 chains, or 57.4 feet along Kumuhakane; thence
N. 36° E. 2.19 chains, or 144.5 feet along Waimano; thence

N. 44° W. 1.97 chains, or 130.0 feet along Kamaewa-
ewa; thence

S. 66° W. 0.80 chains, or 52.8 feet along Kamaewa-
ewa; thence

N. 42° W. 4.60 chains, or 303.6 feet along Kamae-
waewa to initial point.

Area, 1.775 Acres. [16]

APANA 4. At Kealapii in Ili of Keahua. Be-
ginning at South corner, and running:

N. 80° E. 2.60 chains, or 171.6 feet along Kuhe-
leloa; thence

N. 22° W. 10.60 chains, or 699.6 feet along Wai-
mano; thence

S. 56° W. 4.00 chains, or 264 feet along Kaho-
lona; thence

S. 21° E. 2.50 chains, or 155 feet along Lolei;
thence

N. 68° E. 2.00 chains, or 132 feet along Kapaia;
thence

S. 16-1/2° E. 6.40 chains, or 422.4 feet along Kapaia
to initial point.

Area, 2.919 Acres.

APANA 5. At Kumupali in Ili of Keahua. Be-
ginning at South corner, and running:

N. 52° E. 1.54 chains, or 101.6 feet along Kaholona;
thence

N. 24° W. 9.41 chains, or 621.1 feet along Kanakao-
kai; thence

S. 71° W. 2.95 chains, or 194.7 feet along Lihue;
thence

S. 19° E. 2.90 chains, or 191.4 feet along Kupihea;
thence

S. 49° W. 3.53 chains, or 233 feet; thence

S. 72° W. 1.69 chains, or 111.5 feet along Kuheleloa;
thence

S. 32° E. 1.83 chains, or 122.8 feet along Kaho;
thence

N. 64° E. 4.70 chains, or 310.2 feet along Kamaile;
thence

S. 45° E. 4.66 chains, or 307.6 feet.

Area 3.816 Acres.

II.

That said plaintiff is entitled to said land by inheritance as the heir of Alexandrina Leihulu Keohokalo, deceased, and is entitled to the immediate use and possession of said premises.

III.

That the defendant above-named claims said property adversely to the plaintiff and plaintiff is desirous of having their [17] respective titles adjudicated and quieted, and that the defendant is a necessary party to the complete determination and settlement of the questions involved herein.

WHEREFORE, the plaintiff prays that the defendant be summoned to answer this complaint and that he may be required to set up any adverse claim which he may have in and to the aforesaid pieces or parcels of land, or any part thereof, and that the title to the said pieces or parcels of land be quieted and plaintiff's ownership in fee simple to the same may be confirmed, and that a writ of possession issue to place plaintiff in possession of said property, and for costs of this suit and for such other relief as to the Court may seem meet.

Dated, Honolulu, T. H., September 20, 1916.

(S.) MELEANA KALEHUA,
Plaintiff.

(S.) ANDREWS & PITTMAN,
J.,
Attorneys for Plaintiff.

Territory of Hawaii,
City and County of Honolulu,—ss.

Meleana Kalehua, being first duly sworn, deposes and says: That she is the plaintiff in the above-entitled action named; that she has heard read the foregoing bill of complaint and knows the contents thereof and that the same is true of her knowledge.

(S.) MELEANA KALEHUA.

Subscribed and sworn to before me this 20 day of September, A. D. 1916.

[Seal] (S.) JAS. K. JARRETT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

[Endorsed]: Filed at 1:35 o'clock P. M. September 21st, 1916. (S.) J. A. Dominis, Clerk. [18]

In the Circuit Court of the First Circuit, Territory of Hawaii.

A. D. 1916 TERM.

(STAMPS \$2.00)

MELEANA KALEHUA,
Plaintiff,
vs.
HENRY CLARK,
Defendant.

Term Summons.

The Territory of Hawaii: To the High Sheriff of the Territory of Hawaii, or His Deputy; the Sheriff of the City and County of Honolulu, or His Deputy, or any Police Officer.

YOU ARE COMMANDED to summon Henry Clark, defendant, in case he shall file written answer within twenty days after service hereof, to be and appear before the said Circuit Court at the term thereof pending immediately after the expiration of twenty days after service hereof; provided, however, if no term be pending at such time, then to be and appear before the said Circuit Court at the next succeeding term thereof, to wit, The A. D. 1917 Term thereof, to be holden at Honolulu, City and County of Honolulu, on Monday, the 8th day of January next, at 10 o'clock A. M., to show cause why the claim of Meleana Kalehua, plaintiff, should not be awarded to her pursuant to the tenor of her annexed Complaint.

And have you then there this writ with full return of your proceedings thereon.

WITNESS the Honorable Presiding Judge of the Circuit Court of the First Circuit at Honolulu aforesaid, this 21st day of September, 1916.

[Court Seal] (S.) J. A. DOMINIS.

Clerk.

Sheriff's Return to Term Summons.

Served the within summons as follows: On Henry Clark, therein named as defendant, at Honolulu, City and County of Honolulu, T. H., on this 22d day of

September, A. D. 1916, by delivering to Noah W. Aluli, his attorney, a certified copy hereof and of the petition or complaint hereto annexed and at the same time showing him the original.

Dated Honolulu, Sep. 22d, 1916.

(S.) PATRICK GLEASON,
Deputy High Sheriff.

[Endorsed]: L. No. 8543, Reg. 6, p. 9. Circuit Court, First Circuit. Meleana Kalehua, Plaintiff, vs. Henry Clark, Defendant. Term Summons. Issued at 1:35 o'clock P. M., September 21st, 1916. (S.) J. A. Dominis, Clerk. Received at 9:20 A. M. Sep. 22, A. D. 1916. (S.) P. Gleason, Deputy High Sheriff. Returned at 1:30 o'clock P. M., September 25th, 1916. (S.) J. A. Dominis, Clerk. Andrews & Pittman, Attorneys for Plaintiff. Pau, Judgment for Deft. Feb. 15/17. (S.) Claus L. Roberts, Clerk. [19]

*In the Circuit Court of the First Judicial Circuit.
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Answer of Defendant.

Now comes Henry Clark, whose full and true name is Henry N. Clark, defendant, by his attorneys, Carlos A. Long and Noa W. Aluli, and answering the complaint of the plaintiff filed in the above-entitled action, denies each and every allegation in the said complaint contained.

WHEREFORE, defendant demands judgment, that the complaint of the plaintiff be dismissed with costs.

Dated, Honolulu, T. H. September 29, 1916.

(S.) CARLOS A. LONG and
NOA W. ALULI,
Attorneys for Defendant.

[Endorsed]: Law No. 8543. Reg. 6, pg. 9. Circuit Court, First Circuit, Territory of Hawaii. Meleana Kalehua, Plaintiff, vs. Henry Clark, Defendant. Answer of Defendant. Filed September 30, 1916, at 25 minutes past — o'clock A. M. (S.) J. A. Dominis, Clerk. Attorneys for Defendant.
[20]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Stipulation as to Facts.

The following are stipulated as facts, and shall be considered and taken as duly proved and in evidence in the above-entitled action, upon the trial thereof and in any and all proceedings herein.

1. That the common source of title of the said plaintiff and the said defendant was and is in Alexandrina Leihulu Keohokalole, deceased, in and to all the property mentioned in said complaint, and that it should not be necessary for the plaintiff to prove the same.

2. That on the 6th day of August, 1912, the said Alexandrina Leihulu Keohokalole
(S.) L.A. married the said defendant, whose
(S.) N.W.A. full and true name is Henry N. Clark,
Diego,
in San Francisco, City and County of
Diego,
San Francisco, State of California.

3. That the said Alexandrina Leihulu Keohokalole (or Alexandrina Leihulu Clark), died intestate

on March 23, 1914, leaving ~~her husband~~ the said defendant Henry N. Clark, and leaving no children, or father or mother or brother or sister or nephew or niece.

4. That the said plaintiff, Meleana Kalehua, a female, was a cousin of the said Alexandrina Leihulu Keohokalole (Alexandrina Leihulu Clark), that is to say, she, the said plaintiff, was not [21] the mother nor the sister nor the descendant of a deceased sister or brother of the said Alexandrina Leihulu Keohokalole (Alexandrina Leihulu Clark).

5. That nothing in this stipulation contained shall preclude either the plaintiff or the defendant from offering further any additional evidence in this action, upon matters not concluded hereby.

IN WITNESS WHEREOF, the parties hereto, by their respective attorneys, have herewith set their hands on this 2 day of October, 1916.

MELEANA KALEHUA,

Plaintiff,

By (S.) ANDREWS & PITTMAN,

Her Attorneys.

HENRY CLARK, Whose Full and True Name
is HENRY N. CLARK, Defendant.

By (S.) CARLOS A. LONG and

(S.) NOA W. ALULI,

His Attorneys.

The foregoing stipulation is approved and the same ordered to be filed as a part of the record in

the above-entitled action, this 17 day of October, 1916.

(S.) WM. L. WHITNEY,
Second Judge, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: Circuit Court, First Judicial Circuit,
Territory of Hawaii. Jany. Term, 1916. Meleana
Kalehua, Plaintiff, vs. Henry Clark, Defendant.
Stipulation. L. 8543 6/9. Filed Feb. 14, 10:00
A. M., 1917. (S.) B. N. Kahalepuna, Clerk. An-
drews & Pittman, Attorneys for Ptff. Carlos A.
Long and Noa W. Aluli, Attorneys for Defendant.
[22]

JANUARY, 1917, TERM.

THURSDAY, FEBRUARY 15, 1917.

Court opened at two o'clock P. M.

Judge Presiding: Hon. C. W. ASHFORD, First
Judge.

Clerk: CLAUS L. ROBERTS,

Reporter: J. L. HORNER.

L. No. 8543—JURY WAIVED.

MELEANA KALEHUA

vs.

HENRY CLARK.

Minutes of Court, February 15, 1917—Trial.

Lorrin Andrews, Esq. (of Andrews & Pittman),
counsel for plaintiff.

Messrs. Noa W. Aluli and Carlos A. Long, attor-
neys for defendant.

The stipulation filed herein on the 14th day of February, 1917, was read by Mr. Aluli, of counsel for defendant.

On behalf of plaintiff, Mr. B. N. Kahalepuna, a clerk of this court, was called, sworn, and examined, as a witness.

Counsel for plaintiff offered the records of the Circuit Court, First Circuit, in the case of Emma H. N. Clark vs. Henry C. Clark, being Divorce No. 4304, for the purpose of showing that there was never a valid divorce between the defendant in this case and his former wife.

It was stipulated by counsel that Henry C. Clark, named in D. No. 4304 as libellee, is the same person as the defendant in this case.

Mr. Aluli objects to the admission of the record.

Court admits the record and the same was received in evidence and marked Plaintiff's Exhibit "A."

At two o'clock and fifteen minutes P. M. plaintiff rests.

There being no objection, counsel for defendant reads into the record herein extracts from the records of the third division of this court, to wit, "Chamber Records, Third Judge, Vol. VIII" (page 129 and page 149).

It is stipulated by counsel that there are no further proceedings in the minutes of this court except those read by Mr. Aluli, counsel for defendant, and is also stipulated that no further summons or any other process was served on Henry C. Clark, libellee therein, except the original summons.

At two o'clock and twenty-five minutes P. M. defendant rests.

Argument.

At 2:30 o'clock P. M. the case was submitted. [23]

Decision.

The COURT.—“I will support the defense upon the ground that the decree of divorce of October 26, 1911, granted in the case brought by Emma H. N. Clark against Henry C. Clark, namely, the present defendant (D. No. 4304), was a good and valid decree of divorce; that thereafter the present defendant was at liberty to marry and did marry Leihulu Keohokalole, and upon her death became and was her sole and only heir at law and as such inherited the property involved in this litigation; consequently, the Court grants judgment for the defense.”

Mr. Andrews, attorney for plaintiff, excepts to the decision of the Court as contrary to law and the evidence and the weight of the evidence.

At 2:40 o'clock P. M. Court adjourns.

By order of the Court:

(S.) CLAUS L. ROBERTS,
Clerk. [24]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

LAW No. 8543.

February 15, 1917.

MELEANA KALEHUA

vs.

HENRY CLARK.

Opinion of Circuit Court.

I think that there is no denying the general proposition advanced by Mr. Andrews that everyone is entitled to his day in court. Now, his client is entitled to her day in court with reference to any claim which she may make to this or any other property; there is no doubt of that, and it, of course, would be going entirely too far to claim that third parties, whose actions she could not control, could, by any agreement between themselves, in matters where she was not involved, for instance in suits at law where she was not a party, bind or preclude or foreclose her rights. They certainly could not do it. Any agreement that Mr. and Mrs. Clark, the former Mrs. Dreier, may have made with reference to their divorce at that time, could not possibly preclude this plaintiff or anyone else with reference to her or their claims upon this property or any other property; but, while fully admitting that, we find now that she is in court and she is confronted with this kind of defense, admitted in the stipulation, that the party from whom they claim as a common source, namely, Leihulu, was the owner of the property; that she, Leihulu, married Henry Clark in California upon a certain date stated. Not, that, of course, carries with it the [25] implication that it was a legal marriage, it seems to me, but I will go further with the stipulation,—“that Leihulu died leaving her surviving no parents, child, brother, sister or the issue of any deceased brother or sister,”—consequently, from that state of affairs, it would appear that her hus-

band, if she had one, was her heir at law. Now, the defendant claims to be that husband, and this claim is combated by the plaintiff and the ground of combat is that at the time of marrying Leihulu, or assuming to marry Leihulu, he had another matrimonial union with the former Mrs. Dreier, still undissolved, and in support of this they introduce the record in, let us call it, the Dreier-Clark divorce suit. Now, it appears that that very case has very recently been before the Supreme Court and that Court has unanimously decided that the facts and circumstances set forth in that record constituted and resulted in a legal and valid divorce of the former Mrs. Dreier-Clark from Henry Clark, the present defendant. If it did, then Henry Clark was, so far as the Court is informed at the present time, at full liberty to marry Leihulu, and afterwards did marry her, and, if so, then he was her legal husband, and, if he was the legal husband, then he was her heir at law. But it is again objected by the plaintiff that the present plaintiff was in no sense a party to any of those proceedings, neither the proceeding of Clark versus Clark, Divorce 4304 in this court, nor was she a party to the proceeding in which the Supreme Court rendered that decision, namely, in the matter of the estate of Alexandrina Leihulu Clark, deceased, and that the decision of the Supreme Court in that case did not foreclose her rights. That is absolutely good law; there can be no fault found with that, and I imagine that the defendants do not claim that her rights were foreclosed [26] by that decision. But

that decision is valuable and instructive, if not decisive, in this case.

It is suggested that this Court is now at liberty, just as the Supreme Court will be at liberty if the case goes there, as it probably will, to protect her from this decision in the Estate of Clark, because it is not *res adjudicata*; the question here is not *res adjudicata*; it may be *stare decisis*; that is to say, we have the authority of a previous decision by our highest court, and a unanimous decision at that, upon these very facts and this very particular divorce now involved. Nevertheless, as I said before, it is not decisive in this case, but even although it is not decisive, it is so far persuasive that I can see no reason why this court, being a court inferior to the Supreme Court, should undertake now, for reasons of its own, to decide contrary to the decision there. It is perfectly competent for this Court to do so; there is no doubt about that, simply because the decision in the Estate of Leihulu Clark is not decisive in this case, but, although it is competent, is it prudent? As the native would say, "Heaha ka waiwai?" What is the use? Perhaps they will decide the same way again, perhaps they will not. If it goes up there I am going to give them a chance, and I will support the defense upon the ground that the decree of divorce of October 26, 1911, granted in the case brought by Emma H. N. Clark against Henry C. Clark, namely, the present defendant, was a good and valid decree of divorce; that thereafter the present defendant was at liberty to marry, and did marry, Leihulu Keohokalole, and, upon her death, became and was her sole

and only heir at law, and, as such, inherited the [27] property involved in this litigation; consequently grant judgment for the defense.

Dated this 19th day of February, 1917.

[Court Seal] (S.) C. W. ASHFORD,
First Judge, First Circuit Court.

[Endorsed]: Law No. 8543. 6/9. Circuit Court, First Circuit, Territory of Hawaii. Meleana Kalehua, Plaintiff, vs. Henry N. Clark, Defendant. Filed at 11:50 o'clock A. M., February 15, 1917. (S) B. N. Kahalepuna, Clerk. Carlos A. Long and Noa W. Aluli, Attorneys for Defendant. [28]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Exceptions to Decision of Circuit Court.

Now comes the plaintiff above-named, by her attorneys, Andrews & Pittman, and excepts to the decision rendered in the above-entitled cause by the Honorable C. W. Ashford, First Judge of the First Circuit Court, trying said cause, jury waived, and filed in this Court on the 19th day of February, 1917, on the ground that the same is contrary to the law, the evidence and the weight of evidence.

Dated Honolulu, T. H., February 19, A. D. 1917.

(S.) ANDREWS & PITTMAN,

Attorneys for Plaintiff.

[Endorsed]: L. No. 8543. 6/9. Circuit Court, First Circuit, Territory of Hawaii. Meleana Kalehua, Plaintiff, vs. Henry Clark, Defendant. Exception to Decision. Filed February 20, 1917, at 20 minutes past 3 o'clock P. M. (S.) B. N. Kahalepuna, Clerk. Andrews & Pittman, 37 Merchant Street, Honolulu, T. H., Attorneys for Plaintiff. [29]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Judgment of Circuit Court.

This action having been brought by the plaintiff alleging that she is entitled in fee simple absolutely to certain pieces and parcels of land situate in the city and county of Honolulu, Territory of Hawaii, set forth and described in plaintiff's complaint, coming on to be heard before me on the 15th day of February, 1917, when the parties appeared and were at

issue to the Court, jury being waived.

The Court, having heard the parties, finds for the defendant that the bill of the plaintiff be dismissed.

Therefore, it is adjudged that defendant recover of the plaintiff his costs.

By the Court:

[Court Seal] (S.) CLAUS L. ROBERTS,
Clerk.

[Endorsed]: L. No. 8543. Reg. —, pg. 9. In the Circuit Court of the First Judicial Circuit, Territory of Hawaii. Meleana Kalehua, Plaintiff, vs. Henry Clark, Defendant. Judgment. Filed Feb. 27, 11:19, A. M., 1917. (S.) B. H. Kahalepuna, Clerk. [30]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

JANUARY TERM, A. D. 1916.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff,

vs.

HENRY CLARK,

Defendant.

Exceptions to Judgment of Circuit Court.

Now comes the plaintiff above-named, by her attorneys, Andrews & Pittman, and excepts to the judgment rendered in the above-entitled cause by the Honorable C. W. Ashford, First Judge of the First Circuit Court, trying said cause, jury waived, and filed in this court on the 27th day of February, 1917,

on the ground that the same is contrary to the law,
the evidence and the weight of evidence.

Dated Honolulu, T. H., February 27, A. D. 1917.

(S.) ANDREWS & PITTMAN,
Attorneys for Plaintiff.

[Endorsed]: L. No. 8543. 6/9. Circuit Court,
First Circuit, Territory of Hawaii. Meleana Kale-
hua, Plaintiff, vs. Henry Clark, Defendant. Excep-
tion to Judgment. Filed February 27, 1917, at 20
minutes past 11 o'clock A. M. (S.) B. N. Kahale-
puna, Clerk. Andrews & Pittman, 37 Merchant
Street, Honolulu, T. H., Attorneys for Plaintiff.
[31]

**Plaintiff's Exhibit "A"—Divorce Record in Cause
Entitled "Emma H. N. Clark vs. Henry N.
Clark."**

*In the Circuit Court of the First Circuit, Territory
of Hawaii.*

(Stamped \$2.00.)

EMMA H. N. CLARK,

Libellant and Plaintiff,

vs.

HENRY N. CLARK,

Libellee and Defendant.

Libel for Divorce.

To the Honorable the Presiding Judge, at Chambers,
of the Circuit Court of the First Judicial Cir-
cuit, Territory of Hawaii:

Comes now Emma H. N. Clark, libellant herein,
and for cause of action against the above-named
libellee and defendant, and for grounds for divorce

from the said Henry C. Clark, alleges as follows:

1. That both libellant and libellee have been residents of this Territory for more than two years prior to the filing of this Libel.

2. That heretofore, and on, to wit, the 8th day of October, A. D. 1910, at and within the Territory of Hawaii, the said libellant intermarried with the said libellee, the marriage ceremony having been performed by a person duly and regularly authorized to solemnize marriages within the Territory of Hawaii, and having been celebrated and performed in the said city of Honolulu, Territory of Hawaii.

3. That said libellant and libellee herein cohabited and [32] lived together as wife and husband, at the said city of Honolulu, in said territory, until about the first day of July, A. D. 1911, and since said first day of July, have not lived together as wife and husband, and that the last place in which said libellant and libellee did live together as wife and husband was at the said city of Honolulu, Territory of Hawaii.

4. That shortly after the celebration of said marriage ceremony, the said libellee began, and up to the first day of July, 1911, continued, a course of positive ill-treatment of and toward, and a marked and studied neglect of said libellant, amounting and constituting extreme cruelty. And libellant in this respect alleges as follows, to wit:

That libellant, at the time of the marriage aforesaid was the widow of one August E. Dreier, deceased; that the said August E. Dreier up to the time of his death had lived in the Hawaiian Islands for

a great many years, and had been well and favorably known throughout the Hawaiian Islands, and had formed a large circle of acquaintances and friends; that as his wife and the mother of — his children, libellant had become well known throughout the Hawaiian Islands, and had likewise formed many acquaintances and friendships; that at the time of her marriage to libellee, libellant was of the age of fifty-two years; that at the time of said marriage the said libellee was but twenty-four years of age; that at the time of said marriage the said libellant had property in her own right to a considerable amount, and an income therefrom sufficient to maintain her comfortably in life, while said libellee was without means of any nature whatsoever; that libellant entered into the marriage aforesaid with the said libellee, believing that said libellee reciprocated the genuine love and affection which she had for the said libellee, and believing that the libellee entered into the said marriage solely on account of genuine love [33] and affection for the libellant, and without any ulterior motives whatsoever; that shortly after said marriage, the libellee began taunting libellant with the fact that she was many years older than he, and on many occasions—during some of which friends and acquaintances of the parties hereto were present,—spoke in an extremely insulting and vulgar manner to libellant concerning her age, and of the necessity of his associating with females more nearly his own age than was libellant, to the humiliation and shame of the libellant; that ever since said marriage the libellee has utterly failed and refused to

secure employment of any nature whatsoever, and has insisted that he should live entirely off and from the means possessed by libellant; that on many occasions he has ridiculed libellant to her friends and acquaintances, stating that she, libellant, had "bought her boy," meaning libellee, and would have to provide for him. That shortly after said marriage said libellee began to associate with various young women within the city of Honolulu, and to spend money provided by libellant on said women freely and without stint; that libellee at all times concealed from libellant his conduct in the last-mentioned respect, and libellant learned it only from friends who communicated it to her; that about the 24th day of May, A. D. 1911, libellee, on the pretense that he was searching for employment in the city of Honolulu, absented himself from home and went on an automobile trip with several young men and women, to a place on the windward side of the Island of Oahu; that during said trip and at said place the said libellee to his companions spoke of and concerning libellant in an insulting and degrading manner, and boasted to his companions that he would continue to live with the libellant only because she could provide money for him to enjoy himself with women nearer his own age; that on another occasion, the exact date of which libellant cannot now give, the libellee returned home late at night, in a [34] semi-intoxicated condition, and in the presence of two companions, whom he brought with him into the house of the libellant, openly reviled her and insulted her, to her great humiliation, stating, amongst other

things, that he, the libellee, did not care for her on account of her age, and did not care for her because she had reached the age, according to him, when she could not bear children. That prior to the marriage hereinbefore mentioned, the libellee had been intimate with and had cohabited with a married woman, residing within the Territory of Hawaii; that subsequent to the marriage libellee continued to be intimate with the said married woman; that the said married woman, during the month of April, A. D. 1911, secured a divorce from her husband; that after the said divorce was secured, the said libellee, more openly and flagrantly than before, sought the company of and associated with the said married woman, stating that if libellant herein would secure a divorce, he would then marry her, the said married woman.

That on or about the 24th day of May, A. D. 1911, the libellant having in the meantime learned of the action of the said libellee, refused to further live with the said libellee, and refused to permit the said libellee to remain in her house, and refused to provide him with any more money or to purchase for him any more clothing, stating to him that until he had demonstrated the sincerity of his affection for her by abandoning the course which he had pursued up to that time, and had shown that the marriage was not one entered into by him from ulterior motives and for the purpose only of securing for himself money and other property, by securing employment at some honorable calling, he would no longer be permitted to live with her; that libellant at that time informed libellee that it was

not her desire to secure a divorce from him, and that the action taken by her was solely for the benefit of his own welfare, and that she was much averse [35] to having a public record made of the grievous wrongs she had suffered through his action; that within a few days said libellee came to libellant and admitted that he had grossly and wantonly insulted and humiliated and disgrace the libellant in the past, but that should he be forgiven, he would in the future conduct himself in all respects as a good citizen and a good husband should; that thereupon, and upon the faith of the promises so made, libellant permitted libellee to return to the house and live with her, and provided him with all money necessary to enable him to live in a decent and proper style; that within a very few days after his return, the said libellee entered upon the same course of treatment which he pursued prior to the promise of reformation, and in a few weeks had conducted himself towards her, both in her presence and in the presence of friends and acquaintances of libellant, and used such insulting and vulgar language to and of and concerning her, that it was no longer possible for her to live with him further; that his conduct in the respects aforesaid was such as to render life almost unbearable, and to create great mental anguish in her, and to seriously injure her health, both physical and mental; that remonstrance from her to him concerning such conduct, at times resulted in denials that the same had been engaged in, and at other times, when it became apparent to libellee that libellant had accurate knowledge con-

cerning such conduct, in further *insulats* and vile and abusive language towards her.

That the said libellee, though of sufficient ability to provide suitable maintenance for the libellant, and although often requested so to do, and although often requested to provide at least sufficient means to properly maintain and clothe himself, has, ever since the said marriage, refused to do so, and refused to make any attempt whatsoever to do so. And in this respect libellant says that her request to him so to provide for her and for himself was [36] not made for the sole reason that she herself would suffer in any manner without said provision being made, but in order that libellee might not be pointed out by the public as one who married solely in order to be properly fed and clothed and maintained without the necessity of any labor whatsoever on his part.

WHEREFORE, libellant prays that the bonds of matrimony heretofore and now existing between libellant and libellee be dissolved, for extreme cruelty, and for failure, neglect and refusal on the part of libellee, being of sufficient ability, to secure suitable maintenance for libellant; and that her former name of Emma C. Dreier be restored to her; and for such other and further relief as to this Honorable Court shall seem meet.

Dated Honolulu, Hawaii, August 2, A. D. 1911.

EMMA H. N. CLARK,

Libellant.

R. W. BRECKONS,

Attorney for Libellant. [37]

C. Clark, to appear thirty days after service hereof, before such Judge of the Circuit Court of the First Circuit as shall be sitting at Chambers in the courtroom of said Judge, in the Judiciary Building in Honolulu, City and County of Honolulu, to answer the annexed Libel in Divorce of Emma H. N. Clark.

And have you then there this writ with full return of your proceedings thereon.

WITNESS the Honorable Presiding Judge at Chambers and seal of the Circuit Court of the First Circuit, at Honolulu aforesaid, this 2d day of H. S. August
of ~~July~~, 1911.

[Seal]

HENRY SMITH,
Clerk. [39]

Sheriff's Return to Divorce Summons.

Served the within Divorce Summons as follows:
On Henry N. Clark, at Honolulu, this 2d day of August, 1911, by delivering to him a certified copy hereof and of the petition or libel annexed hereto and at the same time showing him the original.

Dated Honolulu, Aug. 2, 1911.

CHARLES H. ROSE,
Deputy Sheriff.

[Endorsed]: D. No. 4304, Reg. 3, pg. 300. Circuit Court, First Circuit. Emma H. N. Clark v. Henry N. Clark. Divorce Summons. Issued at 3:07 o'clock P. M., Aug. 2, 1911. Henry Smith, Clerk, 26. Honolulu Police Dept. Received Aug. 2, 1911, at 3:35 o'clock P. M. Charles H. Rose, ~~Clerk~~. Returned

at 10:05 o'clock A. M., Aug. 3d, 1911. A. K. Aona,
Clerk. Pau.

Tuesday, Aug. 8, 1911.

Divorce Granted.

M. T. SIMONTON,
Clerk.

*In the Circuit Court of the First Circuit, Territory of
Hawaii.*

EMMA H. N. CLARK,
Libellant and Plaintiff,
vs.

HENRY C. CLARK,
Libellee and Defendant.

Answer to Libel for Divorce.

Comes now Henry C. Clark, libellee and defendant herein, and admits that libellant and libellee have been residents of this territory for more than two years prior to the filing of this libel; that they were intermarried as set forth in the libel herein, and that they last cohabited together as husband and wife in the city of Honolulu, in the said Territory of Hawaii; and that libellee denies each and every other allegation in said libel for divorce set forth.

WHEREFORE, libellee prays that the libel herein may be dismissed, and for his costs herein expended.

HENRY CLARK,
Libellee.

Subscribed and sworn to before me this 3 day of July, A. D. 1911.

ANTONE MANUEL,
Notary Public, 1st Circuit.

[Endorsed]: D. No. 4304, Reg. 3, pg. 300. Circuit Court, First Circuit, Territory of Hawaii. Emma H. N. Clark, Libellant, vs. Henry C. Clark, Libellee. Answer to Libel for Divorce. Filed Aug. 3, 1911, at 1:50 o'clock P. M. V. M. Harrison, Clerk. [40]

In the Circuit Court of the First Circuit, Territory of Hawaii.

EMMA H. N. CLARK,
Libellant and Plaintiff,
vs.

HENRY C. CLARK,
Libellee and Defendant.

Consent as to Time of Trial.

I, libellee in the above-entitled case, do hereby consent that the hearing of the libel herein may be heard by the above-entitled Court on ~~Monday~~ Tuesday, the eighth ~~seventh~~ day of August, A. D. 1911.

HENRY N. CLARKE,
Libellee.

Subscribed and sworn to before me this 8th day of August, 1911.

[Seal]

ANTONE MANUEL,
Notary Public 1st Circuit.

[Endorsed]: D. No. 4304, Reg. 3, pg. 300. In the Circuit Court of the First Circuit. Territory of Hawaii. Emma H. N. Clark, Libellant and Plaintiff, vs. Henry C. Clark, Libellee and Defendant. Consent as to Time of Trial. Circuit Court, First Circuit. Filed August 8, 1911, at 9:10 o'clock A. M. M. T. Simonton, Clerk. Robert W. Breckons, Attorney for Libellant. [41]

*In the Circuit Court of the First Circuit, Territory of
Hawaii.*

AT CHAMBERS.

EMMA H. N. CLARK,

Libellant,

vs.

HENRY CLARK,

Libellee.

Decree of Divorce.

Before the Honorable ———, Judge Presiding.
Openly in the Public Courtroom of Said Judge.

On this eighth day of August, A. D. 1911, at the courthouse in the city of Honolulu, openly in the public courtroom of said Judge, came on duly to be heard the petition of said above-named libellant, of the city and county of Honolulu, praying that the bonds of matrimony heretofore existing between them, the said Emma H. N. Clark and Henry C. Clark, be dissolved by reason of the alleged extreme cruelty on the part of libellee towards libellant, and failure on the part of the libellee, being of sufficient ability, to provide suitable maintenance for libellant.

And the said libellant being present in court before said Judge, due proof was made to this Court that the said parties are legally intermarried, and that the allegations in said petition are true. [42]

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the bonds of matrimony existing between the said Emma H. N. Clark and the said Henry C. Clark be, and the same are hereby, dissolved.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED, that the said libellant be restored to her former name of Emma H. N. Dreier. It is further ordered that this decree take effect and be in force from and after this date, to wit:

August 8th, A. D. 1911.

[Seal]

W. J. ROBINSON,

Judge of the Circuit Court of the First Circuit.

[Endorsed]: D.No. 4304, Reg. 3, pg. 300. Circuit Court, First Circuit, Territory of Hawaii. Emma H. N. Clark vs. Henry C. Clark. Decree of Divorce. Circuit Court, First Circuit. Filed August 8, 1911, at 10 o'clock A. M. M. T. Simonton, Clerk. Robert W. Breckons, Attorney for Libellant. [43]

*In the Circuit Court of the First Circuit, Territory of
Hawaii.*

AT CHAMBERS.

Before the Honorable W. J. ROBINSON, Judge
Presiding.

Openly in the Public Courtroom of said Judge.

EMMA H. N. CLARK,

Libellant,

vs.

HENRY C. CLARK,

Libellee.

Decree of Divorce.

On this twenty-sixth day of October, A. D. 1911, at the courthouse in the city of Honolulu, openly in the public courtroom of said Judge, came on duly to be heard the petition of said above named libellant of the city and county of Honolulu, praying that the bonds of matrimony heretofore existing between them, the said Emma H. N. Clark and Henry C. Clark, be dissolved by reason of the alleged extreme cruelty of the said libellee, and neglect and refusal on the part of the libellee, being of sufficient ability to provide suitable maintenance for the libellant for a continued period of more than sixty days.

And the said libellant being present in court before said Judge, due proof was made to this Court that the said parties are legally intermarried, and that the allegations in said petition are true— [44]

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the bonds of matrimony existing

between the said Emma H. N. Clark and the said Henry C. Clark be, and the same are hereby, dissolved and that the said Emma H. N. Clark be permitted to resume her former name of Emma Dreier, and that this decree shall take effect and be in force from and after this date, to wit, October 26th, 1911.

[Seal]

W. J. ROBINSON,

Judge of the Circuit Court of the First Circuit.

[Endorsed]: D. 4304. Reg. 3/300. Circuit Court, First Circuit, Territory of Hawaii. Emma H. N. Clark, Libellant, vs. Henry C. Clark, Libellee. Decree of Divorce. Filed October 26th, A. D. 1911, at 2:15 o'clock P. M. V. M. Harrison, Clerk. [45]

[Endorsed]: Number 4304, Divorce Division. Circuit Court, First Circuit. Emma H. N. Clark vs. Henry C. Clark. 1911. Divorce Granted. Entered in Docket 28D, page 26, Record 3, page 300. Henry Smith, Clerk.

L. No. 8543. Plaintiff's Exhibit "A." Filed Feb. 15, 1917. Claus L. Roberts, Clerk.

No. 1013. Rec'd and filed in the Supreme Court Mar. 28, 1917, at 11:15 o'clock A. M. Robert Parker, Jr., Assistant Clerk. [46]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

Divorce #4304.

(Previously granted. Retrial.)

EMMA H. N. CLARK,

Libellant,

vs.

HENRY C. CLARK,

Libellee.

Testimony.

Before Hon. W. J. ROBINSON, Presiding.

Thursday, October 26th, 1911.

APPEARANCES:

MR. W. R. BRECKONS, Attorney for Libellee.

**Testimony of Mrs. Emma H. N. Clark, in Her Own
Behalf.**

MRS. EMMA H. N. CLARK, being first duly sworn in her own behalf, testified as follows:

(By Mr. BRECKONS.)

Q. State your name. A. Emma Dreier.

Q. Are you acquainted with Henry C. Clark?

A. Yes, sir.

Q. Were you ever married to him?

A. I was married to him.

Q. When? A. Last year. [47]

Q. Do you remember the date?

A. October 8th.

Q. How long have you resided in the Territory of

(Testimony of Mrs. Emma H. N. Clark.)

Hawaii—more than two years? A. Oh, yes.

Q. Has Mr. Clark resided in the Territory of Hawaii more than two years? A. I think so.

Q. When did you and Mr. Clark—where did you and Mr. Clark last live together as husband and wife? A. At Puuni, Island of Oahu.

Q. From the time Mr. Clark and you were married did he contribute anything towards your support and maintenance? A. Not a cent.

Q. Was he able to do it; is he in good health, able to work?

A. He was able but he didn't like to do it.

Q. From the time he was married to you how did he treat you? State whether or not he ever left you, tell us why he left you and the matters that led up to your final separation.

A. He was leaving me to run with another person.

Q. You say he was running with other persons; male or female, do you particularly mention?

A. With a lady in town.

Q. Did you ever accuse him of that on more than one occasion? A. I did.

Q. And on the occasions when you did accuse him what did he say? A. It was his business.

Q. At any time when you accused him did you tell him at any time where he had been, did he say whether he had or not?

A. He used to say "no" at times.

Q. At times did he say anything other than "no"?

[48] A. Yes.

Q. What did he tell you then, what did he say?

(Testimony of Mrs. Emma H. N. Clark.)

A. He said it was his business.

Q. To you, in the presence of others, did he ever make any comment or say anything about your age?

A. Yes, he did.

Q. What was that circumstance you refer to ?

A. That I was too old for him.

Q. Too old for what? Tell about the incident when Henry Hughes and George Beckley were there.

A. What was it?

The COURT.—State, Mrs. Clark. There is no reason why you should be diffident about the matter: this is a public courtroom. It is your duty to state exactly what was said by Henry Clark at the time he made this statement.

A. He said I was too old to have a family.

(Mr. BRECKONS.)

Q. How did the conversation come on?

A. When they came in—he was out with a party and they got home about one o'clock in the morning; he brought these two young men; they all sat down and he asked me to come in and get some beer and some cake, and I did bring it to the table. I cut the cake, and Mr. Beckley said it was delicious. He asked my husband: "Are you raising a cow that you can get your milk and butter?" He said, "Yes, we are raising chickens and everything." Mr. Beckley said: "Can't you raise anything better than that?"

Q. Then what did Mr. Clark say?

A. We couldn't.

Q. Did he say why?

(Testimony of Mrs. Emma H. N. Clark.)

A. Because I was too old. [49]

Q. What did you say?

A. I said he knew how I looked before we got married, why didn't he leave me then.

Q. Will you please tell us about when you and Mr. Clark first separated? A. May 24th.

Q. How long did he remain away?

A. One week (?); then he came back.

Q. When he came back what did he tell you?

A. He asked forgiveness.

Q. Forgiveness for what?

A. For doing what he thought was wrong.

Q. What was that?

A. His going with this woman.

Q. Who was that woman? A. Mrs. —.

Q. That was a woman he knew before he married?

A. Yes, sir.

Q. Then after he returned to you he continued to live up to what time?

A. Until after the second of January.

Q. Then what happened? A. I sent him away.

Q. Why?

A. Because he couldn't do anything to support me, or he wouldn't do it.

Q. What was there at that time, if anything, about this woman? What did he say to you about her that you finally sent him away, or finally parted, do you remember? A. Yes.

Q. What was it? [50]

A. He said he would get married.

Q. Married to who?

(Testimony of Mrs. Emma H. N. Clark.)

A. He said if I would get a separation from him he would marry this woman.

Q. Prior to your marriage to him did you talk to him about the woman?

A. He told me that he was going to tell her that he was going to marry me, and he went and told her and she said it was all right.

Q. At the time you married Mr. Clark I believe he had been fined for something in court. How much was that? A. One thousand.

Q. Who paid that? A. I paid it myself.

Q. During the time you lived with him who supplied him with his pocket money and money for clothing? A. I did all the time.

The COURT.—How about the household expenses; did he contribute anything to them?

A. Nothing whatever.

Mr. BRECKONS.—Q. Your health—up to the time you separated from him in what condition was your health? A. Very poor.

Q. To what do you attribute that?

A. Well, sorrows and heart trouble.

Q. Then—to put it in a nutshell—there was trouble with Henry all the time? A. Yes. [51]

WITNESS.—I ask to resume my maiden name, Emma Dreier.

The COURT.—Let the prayer of the petition be, and the same is hereby, granted; let the bonds of matrimony heretofore and now existing between the libellant and the libellee be and the same are hereby dissolved. This decree shall take effect and be in

(Testimony of Mrs. Emma H. N. Clark.)

force from and after this date, October 26th, 1911, and that the said Mrs. Emma H. N. Clark be permitted to resume her former name of Emma Dreier.

Proceedings here closed. [52]

Honolulu, T. H., February 18, 1916.

This is to certify that the foregoing and attached six typewritten pages contain a full, true and correct transcript from my shorthand notes of the testimony taken and proceedings had in the matter of the libel for divorce of Emma H. N. Clark vs. Henry C. Clark, heard before the Hon. W. J. Robinson, at the time and place therein mentioned.

P. MAURICE McMAHON,

Ex-Official Reporter, First Circuit Court, Territory of Hawaii.

[Endorsed]: D. 4304. Circuit Court, First Circuit, Territory of Hawaii. R. 3/300. Emma H. N. Clark, Libellant, vs. Henry C. Clark, Libellee. Transcript of Testimony. Filed Feb. 18, 1916. Henry Smith, Clerk. P. Maurice McMahan, Reporter. [53]

*In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.*

LAW No. 8543.

MELEANA KALEHUA,

vs.

HENRY CLARK.

February 15, 1917.

The COURT.—What are the appearances, gentlemen?

Mr. ANDREWS.—I appear for the plaintiff, if the Court please, Andrews & Pittman.

Mr. ALULI.—Mr. Long and myself appear for the defendant, Henry Clark. We have filed our general denial, the defendant, and also our waiver of trial by jury, and we also have filed a stipulation which reads as follows: (Reads.) That is the stipulation. Of course Mr. Andrews has some more witnesses, some more evidence to offer.

Mr. ANDREWS.—Perhaps I can briefly outline the reason of this suit. (Makes opening statement.)

Mr. Aluli has agreed with me to practically stipulate all the facts that it would be necessary to prove in regard to technically proving our claim to this estate, and I understand—if I am incorrect Mr. Aluli will correct me, and with his consent I make this offer of proof: That the plaintiff in this case, Mrs. Meleana Kalehua, will be able to prove, and will prove, if necessary, and it is admitted that—as proof, that one Malo and David Malo were brothers; that David married—David Malo married one Lipaka and by her had one child named Emma, who married John Kapana; that the child of Emma and John Kapana was Leihulu, who is the common source of title in this case; [54] that the brother of David Malo married a woman named Kauai; that they had one child, Momona; that Momona married a woman named Kamaka and that the child of—child of Kamaka and Momona is the plaintiff herein.

Mr. ALULI.—The plaintiff is first cousin to Leihulu.

Mr. ANDREWS.—First cousin.

Mr. ALULI.—That has been admitted in the stipulation.

Mr. ANDREWS.—And there are no other—and that she is the nearest relative; there are no other relatives as near as that.

The COURT.—I understand that is practically admitted.

Mr. ANDREWS.—Yes.

Mr. ALULI.—Yes.

The COURT.—In the stipulation.

Mr. ALULI.—Yes.

Mr. ANDREWS.—Now, then, that having been proved, your Honor, and being on the record, I think the only thing—Is the clerk here? I will try and call the clerk of the court to introduce the records.

The COURT.—I would like to ask you gentlemen what you think of my qualification or disqualification to sit here. I advised the defendant some years ago concerning his rights in this property as against the so-called Maikai heirs. Now, whether your plaintiff is one of the Maikai heirs I don't know.

Mr. ANDREWS.—She is not one of the Maikai heirs; she claims to be nearer. I think that it was the Maikai heirs that brought the suit.

Mr. LONG.—Yes, that brought the suit.

The COURT.—Well, then, it was not with reference to the claim that you now urge?

Mr. ANDREWS.—No, your Honor. [55]

The COURT.—That I advised—?

Mr. LONG.—No.

Testimony of B. N. Kahalepuna, for Plaintiff.

B. N. KAHALEPUNA, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ANDREWS.)

Q. What is your position, Mr. Kahalepuna?

A. My name, B. N. Kahalepuna, clerk of Circuit Court of the First Circuit.

Q. And have you the custody of the papers belonging to that court? A. Yes, I have.

Q. Will you produce, please, divorce record 4304, Clark vs. Clark? A. Yes.

Mr. ANDREWS.—We will ask the defense to admit that the Henry C. Clark in these divorce proceedings is the same Henry Clark that we name as defendant in this case. It is marked here in the divorce paper Henry C. Clark.

Mr. ALULI.—We object, may it please the Court, to the introduction of these papers.

Mr. ANDREWS.—Well, will you admit that it is the same man?

Mr. ALULI.—Yes.

Mr. ANDREWS.—I have not offered the papers yet. I now, if the Court please, offer the divorce record—that's all, Mr. Kahalepuna, thank you. I now offer divorce record No. 4304, Circuit Court of the First Circuit, Emma H. N. Clark versus Henry C. Clark, for the purpose of showing that there was never a valid divorce between the defendant in this case and his former wife.

(Testimony of B. N. Kahalepuna.)

The COURT.—Now, may I ask you if that is the same divorce [56] record, or the record in the same case, as has been passed upon by the Supreme Court in the case entitled *In the Matter of the Estate of Alexandrina Leihulu Clark, deceased*?

Mr. ANDREWS.—Yes, your Honor.

The COURT.—At page 453 of the 23d Hawaiian?

Mr. ANDREWS.—Yes, your Honor.

Mr. ALULI.—Exactly the same.

The COURT.—And do you admit that the Supreme Court in that case reached the conclusion that the divorce of Mrs. Clark from the present defendant in that case was legal and valid?

Mr. ANDREWS.—Yes. We want to offer it in evidence for the purpose, however, of showing—getting it on the record and showing that so as we can make it a part of our record.

Mr. ALULI.—We object to it, may it please the Court. It is immaterial and incompetent evidence in that, first, it is a collateral attack made by parties, strangers, to the record, and, secondly, that it has already been ruled by the Supreme Court that this decree of divorce was valid.

The COURT.—Well, we have hardly reached that, it seems to me, until the record itself is before the Court.

Mr. ALULI.—I thought it had been offered.

The COURT.—I will admit the record as Exhibit “A” for the plaintiff in this case.

Mr. ANDREWS.—Well, I think, unless I have

(Testimony of B. N. Kahalepuna.)

omitted something very important, I think that is our case.

The COURT.—Well, I don't know much about that record. What is it?

Mr. ANDREWS.—Let me call your Honor's attention, then, to the record, that shows as follows—

The COURT.—Just give me the number of that.
[57]

Mr. ANDREWS.—Yes. 4304, No. 4304. (Makes statement to the Court.)

The COURT.—In other words, then, there are two decrees of divorce, or what purports to be two decrees of divorce,—one dated the 8th of August, 1911, and another one dated—

Mr. ANDREWS.—26th of October, 1911.

The COURT.—26th of October, 1911.

Mr. ANDREWS.—Well, I think, if the Court please, then, I rest my case.

The COURT.—Very well, plaintiffs rest.

Mr. ALULI.—It appears from the record at chambers, Third Judge, Volume 8, Judge Robinson's record, the following, on page—

The COURT.—You propose to introduce that?

Mr. ALULI.—Yes, page 129.

The COURT.—Any objection to this?

Mr. ANDREWS.—No, your Honor.

Mr. ALULI.—(Reading:) "Monday, October 23, 1911. Present, Honorable W. J. Robinson, Third Judge. M. T. Simonton, clerk. P. Maurice McMahon, reporter, in the matter of setting aside decree of divorce. The Court, at 9 o'clock A. M. this day

(Testimony of B. N. Kahalepuna.)

orders: 'Mr. Clark, it is ordered that the decrees of divorce heretofore entered in the case, a list of which I have here, on the various dates and days specified in such list, all of such cases being divorce cases, are hereby vacated and set aside on the ground and for the reason that said decrees, and all thereof, are void and of no force and effect, the same having been rendered and entered in such causes of action prior to the expiration of thirty days from and after service of process or appearance in each of said actions respectively.' [58]

"The cases in which the decrees of divorce are vacated and set aside are as follows:"— There are one hundred and twenty-one cases—one hundred and twenty-six cases, and in the list we find the number of the divorce case which has been introduced as an exhibit—what is the number, 4382?

The CLERK.—4304.

Mr. ALULI.—4304. We also find, which explains the two decrees.

Mr. ANDREWS.—Is that all you want to put in?

Mr. ALULI.—And we also offer the following: "Thursday, October 26, 1911. Present—" Page 149, same volume—

The COURT.—You are willing that this also may be read?

Mr. ANDREWS.—Yes, your Honor.

Mr. ALULI.—(Reading:) "Present Honorable W. J. Robinson, Third Judge, M. T. Simonton, clerk, P. Maurice McMahon, reporter. Divorce 4304. Emma H. N. Clark versus Henry N. Clark, Libel

(Testimony of B. N. Kahalepuna.)

for divorce. This cause came on for hearing and trial at 9:10 o'clock A. M. R. W. Breckons, Esquire, appearing as attorney for libelant, Henry N. Clark, libelee, not appearing in person or by attorney, but having filed an answer denying each and every allegation of the libel except the marriage. Emma H. N. Clark, libelant, is called, sworn and examined. Thereupon the Court orders: 'Let the prayer of the libel be and the same is hereby granted, and let the bonds of matrimony heretofore and now existing between the libelant and the libelee be, and the same are, hereby dissolved.

It is further ordered that the libelant be and she is hereby permitted to resume her former name of Emma H. N. Dreier.

It is further orderd that this decree take effect and [59] be in force from and after this day, to wit, October 26th, A. D. 1911.' "

Mr. ANDREWS.—Now, will you admit, Mr. Aluli, that there are no further proceedings in the minutes except these that you have rendered of record in this suit?

Mr. ALULI.—That's all.

Mr. ANDREWS.—No further proceedings?

Mr. ALULI.—No further proceedings.

Mr. ANDREWS.—And you will admit that there is nothing further on the record showing any further notification at all, either to appear—

Mr. ALULI.—The records will show that, the records and transcript of evidence.

Mr. ANDREWS.—Will show that that is the fact?

(Testimony of B. N. Kahalepuna.)

Mr. ALULI.—Yes.

Mr. ANDREWS.—That no further summons was ever served on Clark except the original summons?

Mr. ALULI.—That is admitted.

Mr. ANDREWS.—No further summons or any other process ever served on Clark after the original.

The COURT.—Very well, what have you in defense?

Mr. ALULI.—We are objecting to the introduction of this record.

The COURT.—Why, that record has been introduced long ago.

Mr. ALULI.—That is, as an exhibit?

The COURT.—Yes, as an exhibit, introduced in evidence and read, or portions of it read. I told you that we couldn't pass upon that thing very well until it was before the Court,—pass upon its legal effect.

Mr. ALULI.—Will you admit that the first husband of Leihulu, Keohokalole, is still living? [60]

Mr. ANDREWS.—We don't know anything about that. That has not anything to do with our case.

Mr. ALULI.—Oh, yes, it has. I will take the stand—

The COURT.—What has it to do with your case, Mr. Aluli?

Mr. ALULI.—Why, we answered that—that this plaintiff is not entitled to the land at all. General denial was filed. We can offer any evidence affecting her claim and we want to show—we want to go up to the Ninth Circuit, if needs be, showing that, even though this decree is held void, still she does

(Testimony of B. N. Kahalepuna.)

not come in because her first husband is still living, who was her next heir.

The COURT.—Why is it necessary to go into that question if Henry Clark is the heir? What do we care if Meleana Kalehua, or the Maikai heirs, stand next in order?

Mr. ALULI.—That may be so, but under our general denial we have the right to offer any objection against this party, plaintiff, and we propose not only to show that we are the legal husband of the decedent, but to further show to the Court that even though their move is correct, even though this decree should be set aside, still there are other parties who are entitled to this land.

(Argument.)

Mr. ALULI.—No further testimony, your Honor.

The COURT.—You rest?

Mr. ALULI.—We rest.

(Judgment granted for the defense.)

Mr. ANDREWS.—We except to the decision as contrary to the law and the evidence and the weight of evidence. [61]

I HEREBY CERTIFY the above and foregoing to be a complete and accurate extension of my shorthand notes of the proceedings had and testimony taken during the trial of the above entitled cause.

JAMES L. HORNER.

Official Reporter.

Del. to this — day of Feb., 1917.

[Endorsed]: L. 8543. Circuit Court, First Circuit, Territory of Hawaii. Meleana Kalehua, Plaintiff.

tiff, vs. Henry N. Clark, Defendant. Transcript of Evidence taken February 15, 1917. Filed at 8:50 o'clock A. M. March 28th, 1917. B. N. Kahalepuna, Clerk.

No. 1013. Rec'd and Filed in the Supreme Court. Mar. 28, 1917, at 11:15 o'clock A. M. Robert Parker, Jr., Assistant Clerk. [62]

Opinion of Supreme Court, Territory of Hawaii.

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1916.

No. 1013.

MELEANA KALEHUA v. HENRY CLARK.

ERROR TO CIRCUIT COURT, FIRST
CIRCUIT.

Hon. C. W. ASHFORD, Judge.

Submitted May 28, 1917. Decided June 1, 1917.

ROBERTSON, C. J., QUARLES and COKE, JJ.

PER CURIAM.—This is a writ of error to review the judgment of the Circuit Court rendered in an action to quiet title to certain land situated in the city and county of Honolulu in which the plaintiff in error was the plaintiff, judgment having been given for the defendant.

It was admitted that the title to the land was in Alexandrina Leihulu Clark (formerly Keohokalole) at the time of her death; that she died intestate on March 23, 1914, leaving no children, parents, brother, sister, nephew or niece; and that the decedent was a cousin of the plaintiff. Under our statute of descent the husband of the intestate, if she left one, would

be the sole heir of the intestate. It was admitted that the defendant and the decedent were intermarried at San Diego, California, on August 6, 1912, but the validity of the marriage is questioned. The contention of the plaintiff in error is that the defendant was not the lawful husband of the decedent because, at the time of their purported marriage, he had a wife living, and this raises the question whether the defendant had been legally divorced from his former wife. This very question was passed upon in the case of *Estate of Clark*, 23 Haw. 451, 454, [63] and was determined adversely to the plaintiff's contention. It appeared that on August 2, 1911, the defendant's former wife, Emma H. N. Clark, instituted against her husband a suit for divorce alleging extreme cruelty and failure to provide; that on the following day the libellee filed his answer admitting the jurisdictional facts and denying the grounds for divorce set forth; that on August 8, 1911, the libellee filed a consent to a hearing of the case on that day, and a hearing was had and a decree of divorce entered; that on October 23, 1911, after the decision of the case of *Markle v. Markle*, 20 Haw. 633, that decree was set aside; that on October 26, another hearing was had on the same pleadings and another decree granting the divorce entered; and that the record did not show that the libellee had notice that the second hearing was to be had. In *Estate of Clark*, *supra*, this Court held that the decree in the divorce case was at most voidable, but not void, and was not subject to collateral attack. There is no material change in the facts, and no new points of law have

been presented. We are satisfied that the former case was correctly decided, and hold that, for the reasons there set forth, the decision should be adhered to. The defendant, then, was the sole heir of his deceased wife, and the plaintiff inherited no estate in the land in dispute.

The judgment of the Circuit Court is affirmed.

ANDREWS & PITTMAN, for Plaintiff in Error.

C. A. LONG and N. W. ALULI, for Defendant in Error.

By the Court.

J. A. THOMPSON,
Clerk.

[Endorsed]: No. 1013. Supreme Court, Territory of Hawaii. October Term, 1916. Meleana Kalehua v. Henry Clark. Decision. Filed June 1, 1917, at 10:55 A. M. J. A. Thompson, Clerk. [64]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1916.

ERROR TO CIRCUIT COURT, FIRST
CIRCUIT.

MELEANA KALEHUA

vs.

HENRY CLARK.

Judgment of Supreme Court, Territory of Hawaii.

In the above-entitled cause, pursuant to the deci-

sion of the above-entitled court rendered on the 1st day of June, A. D. 1917, the judgment of the Circuit Court of the First Judicial Circuit, filed on the 27th day of February, 1917, is affirmed.

Dated Honolulu, T. H., June 6, 1917.

By the Court.

[Seal]

J. A. THOMPSON,
Clerk Supreme Court.

R.

[Endorsed]: No. 1013. Supreme Court, Territory of Hawaii. October Term, 1916. *Meleana Kalehua vs. Henry Clark*. Judgment. Filed June 6, 1917, at 2:55 o'clock P. M. J. A. Thompson, Clerk. [65]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1915.

No. 935.

In the Matter of the Estate of ALEXANDRINA
LEIHULU CLARK, Deceased.

APPEAL FROM CIRCUIT JUDGE, FIRST
CIRCUIT.

Hon. W. L. WHITNEY, Judge.

Argued July 24, 1916. Decided August 11, 1916.

ROBERTSON, C. J., WATSON and QUARLES,
JJ.

Appeal and Error — Probate — Decree of Distribution.

For the purpose of appeal a decree of distribution is regarded as a final decree.

Divorce—Judgment—Collateral Attack.

A decree of divorce rendered by a court having jurisdiction of the subject matter and of the parties cannot be collaterally attacked for errors or irregularities; that libellee is not notified of the time of the second trial, the original decree having been vacated, is not such a jurisdictional defect as will render the second decree void.

Same—Same—Effect of Vacating.

Where a decree in a suit for divorce is vacated because thirty days had not elapsed after the completion of service of summons on the libellee, it is proper for the court to treat the suit as still pending and retry the same, after the expiration of the thirty days limited by statute, upon the evidence then adduced. [66]

**Opinion of Supreme Court, Territory of Hawaii by
Watson, J.**

Opinion of the Court by WATSON, J.

This is an appeal from a decree of distribution made by a circuit judge of the first circuit sitting at chambers in probate. The case comes to this court on an appeal allowed by the circuit judge as an interlocutory appeal. Such allowance by the circuit judge was not required, as a decree of distribution is for the purpose of an appeal a final decree.

Alexandrina Leihulu Clark, a resident of Honolulu, died intestate on March 23, 1914, leaving no children, or father or mother, or brother or sister,

or nephew or niece. Her estate was duly administered upon and upon the petition of the administrator for the allowance of his final accounts, distribution and discharge this controversy arose. Appellee, Henry N. Clark, to whom was ordered distributed the personal property of the estate, claims to have been the husband of Alexandrina Leihulu Clark at the time of her death and as such the sole heir at law of such intestate. This claim was disputed by several persons in the court below, among others, by the appellant, David U. K. Maikai, who, with his brother, Samuel I. Maikai, since deceased, claimed that they were the nearest surviving next of kin of said intestate and as such entitled to all of the property of said estate; that Henry N. Clark was never legally married to Alexandrina Leihulu Clark, because he was never legally divorced from his first wife, generally known as Mrs. Dreier, and because intestate was never legally divorced from her first husband, one Morris Keohokalole. Thus it will be seen that the sole question presented for our consideration and determination is whether or not, at the time of the death of Alexandrina Leihulu Clark, Henry N. Clark, appellee herein, was her husband, for if he was it is conceded that under the facts in this case and under the laws of [67] this Territory he is entitled, as sole heir at law, to inherit all of the property of said decedent.

The facts upon which appellant bases his contention, that Alexandrina Leihulu Clark was never legally divorced from her first husband, Morris Keohokalole, were found by the trial judge, and are un-

disputed, as follows: Intestate married said Morris Keohokalole on November 5, 1887; on April 3, 1911, she filed divorce proceedings against him on the grounds of desertion and failure to provide; a summons was duly served on libellee April 4, 1911, and on the following day libellee answered admitting all the jurisdictional facts but denying the desertion and failure to provide; the action went to trial on April 18, 1911, a decree being granted on that day; this decree was set aside by the trial judge of his own motion on account of a decision of this court (*Markle v. Markle*, 20 Haw. 633) holding that circuit judges were without jurisdiction to hear or determine divorce cases until the expiration of thirty days after the completion of service of summons on the libellee. The case was next tried on December 23, 1911, on the same pleadings, libellant alone being present in court. The transcript of testimony of this second trial, which was introduced and received in evidence in the lower court, and which is included in the record before us, shows that all of the jurisdictional facts were put in evidence and a decree was granted on the last-mentioned date. One of the grounds of attack on this decree in the case at bar is directed to the fact that the libellee was not in court and the claim that he was not notified of the time and place of the second trial. The circuit judge found that the evidence of Morris Keohokalole in the matter at bar, which has not been sent up as a part of the record herein, was not conclusive on this point, as to whether or not he was notified of the time and place of the second trial, but [68] we

will assume in favor of libellant's contention that said libellee was not so notified.

In the Clark divorce the facts were very similar. The libellant in that case, Emma H. N. Clark, generally known as Mrs. Dreier, married Clark, October 8, 1910; on August 2, 1911, she filed a libel for divorce against him on the grounds of extreme cruelty and failure to provide; on the following day the libellee filed his answer admitting the jurisdictional facts and denying the grounds set forth; on August 8, 1911, libellee filed a consent to a hearing of the case on that day and a hearing was had and a decree entered. This decree was set aside for the same reason as the decre in the Kehokalole case. Another hearing was had on the same pleadings on October 26, 1911, and another decree entered. In this case, as in the Keohokalole case, we will assume that no notice of the second trial was given to Clark—evidence on this point having been offered and refused by the trial judge. The evidence before the circuit judge showed that Clark accepted the benefits of the decree and remarried—this time to the intestate, to whom he was still married at the time of her decease. In this case, as in the Keohokalole case, the evidence taken at the second trial shows proof of all the jurisdictional facts. The case therefore stands on the same footing as the first discussed case. In this court, as in the lower court, two reasons are urged why these second decrees of divorce, in the Keohokalole and Clark cases, respectively, are void: (1) that no notice of the second trial in either case was given to libellee, and (2) that the setting

aside of the original decrees of divorce made void all of the proceedings in the cases, and thereafter it was necessary to commence the cases anew.

As to the first ground, that libellee in neither of the cases above referred to had notice of the second trial, we [69] are clearly of the opinion that this is not a jurisdictional defect which would render the decrees void. The circuit judge before whom the divorce cases were pending had jurisdiction of the subject matter, and jurisdiction of the person of the libellee had been acquired in each case by personal service. The fact that the first decree in each case was later vacated did not have the effect of divesting the court of its jurisdiction theretofore acquired. In 17 A. & E. Enc. L. (2d ed.) p. 1065, the distinction is pointed out between errors and irregularities rendering judgments voidable merely and jurisdictional defects which render the proceedings void. It is there said that "those defects which relate to the jurisdiction over the subject matter are generally of the class which render the proceedings void. On the other hand, there are few defects in the proceedings of a court of justice which render the proceedings void, in the strict sense of that word, where the court has jurisdiction of the subject matter of the suit." See also *State v. Richmond*, 26 N. H. (6 Foster) 232. In *Salter v. Hilgen*, 40 Wis. 363, the court held that "Where a Circuit Court, having jurisdiction of the subject matter of an action and of the parties, renders judgment for the plaintiff as for default of an answer, before the time for answering has in fact expired, the judgment is *irregular*

but not void." In this Territory there is no statute requiring the giving of notice of trial. 38 Cyc. 1271. We hold that the proceedings had upon the second trial of the divorce cases were at most *voidable* and not *void*, and that the decrees entered in such cases, being valid on their faces, are not open to collateral attack in this proceeding.

We think there is no merit in the second ground urged by counsel, that the setting aside of the first decrees of divorce made void all of the proceedings in the cases, and necessitated [70] the commencement of the cases anew. This contention finds no support in the Markle case, *supra*, that case having been remanded to the circuit judge with instructions to set aside the decree and for such further proceedings as might be appropriate. The circuit judge, having vacated the original decrees on the ground that thirty days had not elapsed after the completion of service of summons on the libellees, respectively, correctly treated the causes as still pending, proceeded to retry the same upon the evidence then adduced, and rendered the second decrees above referred to. 23 Cyc. 973, 974; *Kelly v. Harrison* (Miss.), 12 So. 261, 262.

It follows from what has been said that in our opinion the marriage of Henry N. Clark to intestate was a valid marriage, and intestate leaving neither child, father or mother, brother or sister surviving, her husband became and was her sole heir at law; also that evidence tending to prove who would have been the heirs at law of the intestate had she not

left surviving her a lawfully married husband was immaterial to the issues.

The decree appealed from is affirmed.

A. A. WILDER (STANLEY & WILDER, on the brief), for Appellant.

C. A. LONG and N. W. ALULI, for Appellee.

A. G. M. ROBERTSON.

E. M. WATSON.

RALPH P. QUARLES.

[Endorsed]: No. 935. Supreme Court, Territory of Hawaii. October Term, 1915. In the Matter of the Estate of Alexandrina Leihulu Clark, Deceased. Opinion. Filed Aug. 11, 1916, at 10:17 A. M. Robert Parker, Jr., Assistant Clerk. [71]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Petition for Writ of Error and Supersedeas
Returnable to United States Circuit Court of
Appeals for the Ninth Circuit.**

To the Honorable the Chief Justice of the Supreme
Court of the Territory of Hawaii:

Meleana Kalehua, the plaintiff in error in the above-entitled cause, deeming herself aggrieved by the judgment of the Supreme Court of the Territory

of Hawaii, entered and filed on the 6th day of June, 1917, in the above-entitled cause, entitled "Meleana Kalehua, plaintiff in error, vs. Henry Clark, defendant in error," comes now, by Andrews & Pittman, her attorneys, and hereby humbly petitions said Supreme Court of the Territory of Hawaii for an order allowing the said Meleana Kalehua, said plaintiff in error, to prosecute a writ of error and have the same allowed from the United States Circuit Court of Appeals for the Ninth Circuit to said Supreme Court of the Territory of Hawaii under and according to the laws of the United States in that behalf made and provided, and that a transcript of the record, proceedings and documentary exhibits upon which said judgment was made, duly authenticated, may be sent to said [72] United States Circuit Court of Appeals for the Ninth Circuit, and also that an order may be made by this Honorable Court fixing the amount of the bond which the said plaintiff in error shall give and furnish upon the said writ of error, and that upon the filing of such bond, all proceedings in and relating to the subject matter in and of the said cause in the said Supreme Court of the Territory of Hawaii and in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, whether direct or ancillary thereto, be suspended and stayed until the determination of such writ of error by the said United States Circuit Court of Appeals for the Ninth Circuit.

And in this behalf your petitioner shows that the said judgment was rendered in an action at law and that the amount involved in said action, exclusive of

costs, exceeds the value of \$5,000.00.

WHEREFORE, your petitioner prays that a writ of error may issue out of this Court to the end that the errors existing in the record may be corrected and the said judgment reversed, and judgment given to the said plaintiff in error and full and complete justice may be done in the premises.

Dated Honolulu, T. H., December 3rd, 1917.

MELEANA KALEHUA,

Petitioner.

By (S.) ANDREWS & PITTMAN,

Her Attorneys. [73]

Territory of Hawaii,

City and County of Honolulu,—ss.

Meleana Kalehua, of the City and County of Honolulu, Territory of Hawaii, being first duly sworn, upon her oath, deposes and says:

That she is the plaintiff in error in the above-entitled cause, and is well acquainted with the matters in controversy in said cause, and that the amount involved in said cause, exclusive of costs, exceeds the value of Five Thousand Dollars (\$5,000.00).

(S.) MELEANA KALEHUA.

Subscribed and sworn to before me, this 1st day of November, 1917.

[Notarial Seal]

(S.) MABEL A. DOANBURY,

Notary Public, First Judicial Circuit, Territory of Hawaii.

Filed December 3, 1917, at 1:00 P. M. J. A. Thompson, Clerk. [74]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Assignments of Error on Return to Writ of Error
Returnable to United States Circuit Court of
Appeals for the Ninth Circuit.**

Comes now Meleana Kalehua, the plaintiff in error in the above-entitled cause, by Andrews & Pittman, her attorneys, and says that in the record and proceedings in the above-entitled cause in the Supreme Court of the Territory of Hawaii, and in the rendition of its final judgment therein, there are, and have intervened, manifest errors prejudicial to the said plaintiff in error, to wit:

I.

That the said Supreme Court erred in affirming the judgment of the Circuit Court of the First Judicial Circuit of the Territory of Hawaii in said cause.

II.

That the said Supreme Court erred in not reversing the said judgment of the said Circuit Court and in not deciding that judgment should be entered in favor of the said plaintiff in error as prayed in her bill of complaint in said cause.

III.

That the said Supreme Court erred in deciding that

the divorce of Emma H. N. Clark vs. Henry C. Clark, who it is admitted is the defendant in error, being Divorce No. 4304, was a good [75] and valid divorce and that said Henry C. Clark was therefore able to legally marry Alexandrina Leihulu and, by said marriage, was her sole heir at law.

IV.

That the Supreme Court erred in rendering its decision against plaintiff in error and in favor of defendant in error, and further that the Supreme Court erred in sustaining the judgment of the Circuit Court of the First Judicial Circuit dismissing the complaint of the plaintiff in error and denying that she was the heir at law of Alexandrina Leihulu, and, for and on account of said errors assigned above, to all of which objection and exception was taken by the plaintiff in error, the plaintiff in error prays that all of the proceedings in said action be by this Honorable Court reviewed, and that said judgment of the said Circuit Court be set aside and such orders be entered herein as to this Honorable Court may seem meet and proper.

Dated at Honolulu, T. H., December 3d, 1917.

MELEANA KALEHUA,

Plaintiff in Error,

(S.) By ANDREWS & PITTMAN,

Her Attorneys, [76]

Filed December 3, 1917, at 1:00 P. M. J. A. Thompson, Clerk.

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Order Allowing Writ of Error Returnable to United
States Circuit Court of Appeals and Super-
sedeas.**

Upon reading and filing the foregoing petition for a writ of error, together with an assignment of errors presented therewith, alleged to have occurred in the judgment of this Court and in the proceedings in the trial of said cause prior thereto;

IT IS ORDERED that a writ of error be and the same is hereby allowed to the said Meleana Kalehua, to have reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered in the above-entitled cause and the proceedings in the trial of said cause prior thereto, and that the amount of bond on said writ of error be, and the same is hereby fixed in the sum of Five Hundred Dollars (\$500.00); and that upon the filing by said above-named plaintiff in error of an approved bond in said amount, all further proceedings in said cause in the said Supreme Court of the Territory of Hawaii and the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, shall be stayed and suspended until the determination [77] of such writ of error by the said United States Circuit

Court of Appeals for the Ninth Circuit.

Dated at Honolulu, Territory of Hawaii, this 3d day of December, A. D. 1917.

[Seal] A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii. [78]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Petition for Writ of Error and Supersedeas, Assignments of Error and Order Allowing Writ of Error. Filed December 3, 1917, at 1:00 P. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [79]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Supersedeas and Cost Bond on Writ of Error
Returnable to U. S. Circuit Court of Appeals.**

KNOW ALL MEN BY THESE PRESENTS:
That we, Meleana Kalehua, as principal, and Y. Ahin, as surety, are held and firmly bound unto Henry Clark, in the sum of Five Hundred Dollars (\$500.00), to the payment of which, well and truly to be made, we do hereby jointly and severally firmly

bind ourselves and our respective heirs, successors, executors and administrators.

THE CONDITION of this obligation is as follows:

WHEREAS, in an action at law heretofore pending in and before the Supreme Court of the Territory of Hawaii, wherein said bounden principal was plaintiff in error, and obligee was defendant in error, the said Supreme Court did, on the 6th day of June, 1917, order, render and enter a judgment of said Supreme Court, wherein and whereby there was and is affirmed a certain judgment theretofore, to wit, the 27th day of February, 1917, rendered and entered in and by the Circuit Court for the First Circuit of said Territory, in a cause wherein said bounden principal was plaintiff, and said obligee was defendant, and which said judgment was in [80] favor of said defendant; and whereas said bounden principal has applied for, and is about to sue out, a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to said Supreme Court of the Territory of Hawaii to the end that the judgment of the said Supreme Court, above described, may be reviewed by said United States Circuit Court of Appeals for the Ninth Circuit, and has taken, or is about to take, such further and other proceedings as may be necessary to obtain a review by said United States Circuit Court of Appeals for the Ninth Circuit of the judgment last aforesaid;

NOW, THEREFORE, if the said bounden principal shall prosecute said writ of error to effect, and

shall answer all damages and costs if she fails to make her plea good, then the above obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said principal has set her hand and seal, and the said surety has set his hand and seal, hereunto this 4th day of December, A. D. 1917.

(S.) MELEANA KALEHUA,
Principal.
(S.) Y. AHIN,
Surety.

The foregoing bond is hereby approved as to form and sufficiency, this 4th day of December, 1917.

[Seal] A. G. M. ROBERTSON,
Chief Justice Supreme Court of the Territory of
Hawaii. [81]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Supersedeas and Cost Bond on Writ of Error Returnable to U. S. Circuit Court of Appeals. Filed December 4, 1917, at 10:55 A. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [82]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,
Plaintiff in Error,
vs.
HENRY CLARK,
Defendant in Error.

**Writ of Error to the Supreme Court of the Territory
of Hawaii.**

The United States of America,—ss.

The President of the United States to the Honorable
Justices of the Supreme Court of the Territory
of Hawaii, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Territory of Hawaii, before you, or some of you, between Meleana Kalehua, plaintiff in error, and Henry Clark, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by her complaint appears:

We being willing that error, if any there hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty (30) days from the date hereof, that, [83] the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct that error, what of right, according to the

laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 4th day of December, in the year of our Lord one thousand nine hundred and seventeen.

[Seal] J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [84]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Writ of Error to the Supreme Court of the Territory of Hawaii. Filed December 4, 1917, at 10:55 A. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [85]

In the Supreme Court of the Territory of Hawaii.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Citation on Writ of Error Returnable to United
States Circuit Court of Appeals.**

The United States of America,—ss.

The President of the United States to Henry Clark,

GREETING:

You are hereby cited and admonished to be and

appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Meleana Kalehua is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of December, in the year of our Lord one thousand nine [86] hundred and seventeen.

A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii.

[Seal] Attest: J. A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

Due service of the within Citation on Writ of Error returnable to the United States Circuit Court of Appeals for the Ninth Circuit, and receipt of copy thereof, is hereby admitted this 4th day of December, 1917.

CARLOS A. LONG,
Attorney for Henry Clark, Defendant in Error in
Above-entitled Cause. [87]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plain-

tiff in Error, vs. Henry Clark, Defendant in Error. Citation on Writ of Error. Filed and issued for service December 4, 1917, at 10:55 A. M. J. A. Thompson, Clerk. Returned December 4, 1917, at 4:28 P. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [88]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Praeipce for Transcript of Record on Writ of Error
Returnable to United States Circuit Court of
Appeals for the Ninth Circuit.**

To JAMES A. THOMPSON, Esq., Clerk of the Supreme Court of the Territory of Hawaii:

You will please prepare a transcript of a record in the above-entitled cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and include in said transcript the following pleadings, proceedings, opinions, judgments and papers on file in said cause, to wit:

1. Petition for writ of error to the Circuit Court of the First Circuit, Territory of Hawaii, filed March 15, 1917.
2. Assignment of Errors.

3. Notice that writ of error has issued.
4. Summons of the Supreme Court, with return of service.
5. Bond on writ of error.
6. Writ of error to Circuit Court, First Circuit, Territory of Hawaii, issued March 15, 1917.
7. Bill of complaint, filed September 21, 1916.
8. Term summons of the Circuit Court, First Circuit, with return of service.
9. Answer of defendant, filed September 30, 1916.
10. Stipulation as to facts, filed February 14, 1917.
[89]
11. Minutes of the Clerk of the Circuit Court of the First Circuit, under date of February 14, 1917.
12. Decision of Hon. C. W. Ashford, First Judge of Circuit Court, First Circuit, filed February 19, 1917.
13. Exception by plaintiff to decision.
14. Judgment of the Circuit Court, First Circuit, filed February 27, 1917.
15. Exception by plaintiff to judgment.
16. Plaintiff's Exhibit "A," being divorce record entitled in the Circuit Court of the First Circuit "Emma H. N. Clark vs. Henry N. Clark," Numbered 4304, said record consisting of the following documents, viz:
 - (a) Libel for divorce, filed August 2, 1911.
 - (b) Divorce summons, filed August 2, 1911, with return of service.
 - (c) Answer of libellee, filed August 8, 1911.

- (d) Consent of libellee as to time of trial, filed August 8, 1911.
- (e) Decree of divorce, dated August 8, 1911.
- (f) Decree of divorce, dated October 26, 1911, with cover of the foregoing.
- (g) Transcript of testimony, filed February 18, 1916.
- 17. Transcript of proceedings and testimony in the above-entitled cause, under date of February 15, 1917.
- 18. Decision of the Supreme Court of Hawaii, filed June 1, 1917.
- 19. Judgment of the Supreme Court of Hawaii, filed June 6, 1917.
- 20. Opinion of the Supreme Court of Hawaii, rendered and filed August 11, 1916, in the case entitled "In the Matter of the Estate of Alexandrina Leihulu Clark, Deceased," (Number 935).
- 21. Petition for Writ of Error and Supersedeas, returnable to United States Circuit Court of Appeals for the Ninth Circuit.
- 22. Assignments of Error on return to Writ of Error returnable to United States Circuit Court of Appeals for the Ninth Circuit.
- 23. Order allowing Writ of Error returnable to United States Circuit Court of Appeals and Supersedeas.
- 24. Supersedeas and Cost Bond on Writ of Error returnable to U. S. Circuit Court of Appeals.
- 25. Writ of Error to the Supreme Court of the Territory of Hawaii.

26. Citation on Writ of Error, returnable to United States Circuit Court of Appeals, with acknowledgment of service thereof.

You will also annex to and transmit with the record the [90] original Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit, and original Citation with acknowledgment of service, your return of the Writ of Error under the seal of the Supreme Court of the Territory of Hawaii and also your certificate under seal stating in detail the cost of the record and by whom the same was paid.

Dated, Honolulu, T. H., December 5th, 1917.

Respectfully,

ANDREWS & PITTMAN,

Attorneys for Plaintiff in Error.

Service of a copy of the foregoing Praecipe for Transcript is hereby acknowledged.

CARLOS A. LONG and

NOA W. ALULI,

Attorneys for Defendant in Error.

[Endorsed]: No. 1013. Supreme Court, Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Praecipe for Transcript of Record on Writ of Error Returnable to United States Circuit Court of Appeals for the Ninth Circuit. Filed December 6, 1917, at 11:15 o'clock A. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Defendant in Error. [91]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Writ of Error to the Supreme Court of the Territory
of Hawaii.**

The United States of America,—ss.

The President of the United States to the Honorable
Justices of the Supreme Court of the Territory
of Hawaii, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the Territory of Hawaii, before you, or some of you, between Meleana Kalehua, plaintiff in error, and Henry Clark, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by her complaint appears:

We being willing that error, if any there hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same in the said United States Circuit Court of Appeals for

the Ninth Circuit at San Francisco, State of California, within thirty (30) days from the date hereof, that, [92] the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 4th day of December, in the year of our Lord, one thousand nine hundred and seventeen.

[Seal] J. A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [93]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Writ of Error to the Supreme Court of the Territory of Hawaii. Filed December 4, 1917, at 10:55 A. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [94]

In the Supreme Court of the Territory of Hawaii.

ACTION TO QUIET TITLE.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error,

**Citation on Writ of Error Returnable to United
States Circuit Court of Appeals.**

The United States of America,—ss.

The President of the United States to Henry Clark,
GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, State of California, within thirty days after the date of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the Territory of Hawaii, wherein Meleana Kalehua is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of December, in the year of our Lord, one thousand nine [95] hundred and seventeen.

A. G. M. ROBERTSON,
Chief Justice of the Supreme Court of the Territory
of Hawaii.

[Seal] Attest: J. A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

Due service of the within citation on writ of error returnable to the United States Circuit Court of Appeals for the Ninth Circuit, and receipt of copy

thereof, is hereby admitted this 4th day of December, 1917.

CARLOS A. LONG,
Attorney for Henry Clark, Defendant in Error in
Above-entitled Cause. [96]

[Endorsed]: No. 1013. In the Supreme Court of the Territory of Hawaii. Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error. Citation on Writ of Error. Filed and Issued for Service December 4, 1917, at 10:55 A. M. J. A. Thompson, Clerk. Returned December 4, 1917, at 4:28 P. M. J. A. Thompson, Clerk. Andrews & Pittman, Honolulu, T. H., Attorneys for Plaintiff in Error. [97]

In the Supreme Court of the Territory of Hawaii.

MELEANA KALEHUA,

Plaintiff in Error,

vs.

HENRY CLARK,

Defendant in Error.

**Certificate of Clerk Supreme Court, Territory of
Hawaii to Transcript of Record.**

Territory of Hawaii,

City and County of Honolulu,—ss.

I, James A. Thompson, clerk of the Supreme Court of the Territory of Hawaii, by virtue of the foregoing Writ of Error and in obedience thereto, the original of which said Writ of Error is herewith returned, being pages 92 to 94, both inclusive, of the

foregoing transcript of record, and in pursuance to the praecipe to me directed, a copy whereof is hereto attached, being pages 89 to 91, both inclusive, DO HEREBY TRANSMIT to the Honorable United State Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 65, both inclusive, and pages 72 to 88, both inclusive, and I DO HEREBY CERTIFY the same to be true, full and correct copies of the pleadings, exhibit, testimony, clerk's minutes, record, proceedings, opinions and final judgment which are on file and of record in the office of the clerk of the Supreme Court of the Territory of Hawaii in the case entitled in said court "Meleana Kalehua, Plaintiff in Error, vs. Henry Clark, Defendant in Error," Number 1013.

I FURTHER CERTIFY that pages 66 to 71, both inclusive, of the foregoing transcript of record is a full, true and correct copy of [98] the opinion of the Supreme Court of the Territory of Hawaii, rendered and filed on the 11th day of August, 1916, in the case entitled "In the Matter of the Estate of Alexandrina Leihulu Clark, Deceased, Number 935;

I DO FURTHER CERTIFY that the original citation on writ of error with acknowledgment of service thereof, being pages 95 to 97, both inclusive, of the foregoing transcript, are hereto attached and herewith returned;

I LASTLY CERTIFY that the cost of the foregoing transcript of record is Twenty-nine (\$29.00) Dollars, and that said amount has been paid by Messrs. Andrews & Pittman, Attorneys for Meleana Kalehua, Plaintiff in Error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 8th day of December, A. D. 1917.

[Seal] JAMES A. THOMPSON,
Clerk Supreme Court of the Territory of Hawaii.

[99]

[Endorsed]: No. 3099. United States Circuit Court of Appeals for the Ninth Circuit. Meleana Kalehua. Plaintiff in Error, vs. Henry Clark, Defendant in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed December 18, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.